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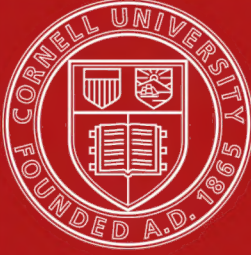
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DIGEST  
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THE ATTORNEYS-GENERAL  
OF THE  
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COVERING  
VOLUMES 17 TO 25, INCLUSIVE

1881-1906

PREPARED BY  
JAMES A. FINCH  
BY DIRECTION OF THE ATTORNEY-GENERAL  
AND AUTHORITY OF CONGRESS

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LIST OF ATTORNEYS-GENERAL, SOLICITORS-GENERAL, AND ACTING ATTORNEYS-  
GENERAL WHOSE OPINIONS COMPRISE VOLUMES 17-25 OPINIONS.

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17 Opinions (1881-1884).—DEVENS—MACVEAGH—BREWSTER.

Samuel F. Phillips, *Solicitor-General and Acting Attorney-General.*

18 Opinions (1884-1887).—BREWSTER—GARLAND.

John Goode, *Solicitor-General and Acting Attorney-General.*

George A. Jenks, *Solicitor-General and Acting Attorney-General.*

William A. Maury, *Acting Attorney-General.*

19 Opinions (1887-1890).—GARLAND—MILLER.

George A. Jenks, *Solicitor-General and Acting Attorney-General.*

Orlow W. Chapman, *Solicitor-General and Acting Attorney-General.*

William H. Taft, *Solicitor-General and Acting Attorney-General.*

20 Opinions (1891-1894).—MILLER—OLNEY.

William H. Taft, *Solicitor-General.*

Charles H. Aldrich, *Solicitor-General.*

Lawrence Maxwell, jr., *Solicitor-General.*

William A. Maury, *Acting Attorney-General.*

Edward B. Whitney, *Acting Attorney-General.*

John B. Cotton, *Acting Attorney-General.*

21 Opinions (1893-1897).—OLNEY—HARMON—McKENNA.

Lawrence Maxwell, jr., *Solicitor-General.*

Holmes Conrad, *Solicitor-General.*

John K. Richards, *Solicitor-General.*

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J. M. Dickinson, *Acting Attorney-General.*

22 Opinions (1897-1899).—McKENNA—GRIGGS.

John K. Richards, *Solicitor-General.*

James E. Boyd, *Acting Attorney-General.*

Henry M. Hoyt, *Acting Attorney-General.*

23 Opinions (1899-1902).—GRIGGS—KNOX.

John K. Richards, *Solicitor-General.*

James E. Boyd, *Acting Attorney-General.*

Henry M. Hoyt, *Acting Attorney-General.*

James M. Beck, *Acting Attorney-General.*

IV LIST OF ATTORNEYS-GENERAL, SOLICITORS-GENERAL, ETC.

24 Opinions (1902-1903).—KNOX.

John K. Richards, *Solicitor-General*.  
Henry M. Hoyt, *Acting Attorney-General*.  
James M. Beck, *Acting Attorney-General*.  
William A. Day, *Acting Attorney-General*.

25 Opinions (1903-1906).—KNOX—MOODY.

Henry M. Hoyt, *Solicitor-General*.  
William A. Day, *Acting Attorney-General*.  
Milton D. Purdy, *Acting Attorney-General*.  
James C. McReynolds, *Acting Attorney-General*.  
Charles H. Robb, *Acting Attorney-General*.  
Charles W. Russell, *Acting Attorney-General*.

# DIGEST OF OPINIONS

## ATTORNEYS-GENERAL OF THE UNITED STATES.

(VOLS. 17-25, INCLUSIVE.)

### ABANDONMENT.

*See* CUSTOMS LAW, III, m.

### ABATEMENT.

*See* INTERNAL REVENUE, III, a; CUSTOMS LAW, VI, a, 335.

### "ABBEY" STEAMSHIP.

*See* SEIZURE, 8.

### ACCEPTANCE.

OF CHECK BY NATIONAL BANK. *See* BANKS, 19-21.

OF PRESENTS BY PRESIDENT. *See* PRESIDENT, XI, 81.

OF VESSEL. *See* LIENS, 5; NAVY, VII, 195-199.

### ACCOUNTING OFFICERS.

OF THE TREASURY. *See* TREASURY DEPARTMENT, II, h.

### ACCOUNTS.

1. Where an account has once been duly adjusted, settled, and closed by the proper officers, upon a full knowledge of all the facts, and no errors of calculation have been made,

it can not be reopened in the absence of statutory authority. 18 Op. 223.

2. Change of method in settling accounts.—The Secretary of the Treasury can not legally, by departmental order, change a practice or course of office procedure prescribed by statute for the settlement of accounts. 19-177.

3. A question with reference to the manner of drawing funds from the Treasury, and the administrative examination of the accounts of the officer disbursing them, is one which should be submitted to the Comptroller of the Treasury. 22 Op. 414.

4. Section 12 of the Dockery Act of July 31, 1894 (28 Stat. 162, 209), does not require the Secretary of the Treasury to report to Congress annually the balances due on postal accounts for the prior fiscal year. 21 Op. 296.

5. The methods adopted in settling accounts for transportation of the Army under the act of March 3, 1879 (20 Stat. 420), are not applicable to accounts for the transportation of enlisted men of the Navy and Marine Corps. 21 Op. 297.

6. Same.—An omission by Congress of some accounts from an act providing for the settlement of certain accounts for transportation shows that it was not the intention of Congress to make that act apply to all accounts for transportation furnished under preceding acts. *Id.*

*See also* ARMY, II, d, 168-179; TREASURY DEPARTMENT, II, h; INDIANS, V, b; REVENUE MARINE, 20, 21; POST-OFFICE DEPARTMENT, 7, 8; DEPARTMENT OF THE INTERIOR, III, c, 37; RAILROADS, II, 10, 11, 24, 40; IV, 65; UNITED STATES MARSHALS, 4-7; and for the accounts of any particular officer, *see* appropriate heading for that officer.



**ACCRUED PENSION.**

*See* PENSIONS, I, e.

**ACQUITTAL.**

*See* CUSTOMS LAW, IX, c, 403.

**ACTIONS.**

1. An action for the recovery of duties on goods previously smuggled would be a suit "in which the United States is a party, or interested," within the meaning of section 379, Revised Statutes, and as such the Solicitor of the Treasury has power to instruct in regard thereto. 20 Op. 714.

2. Third persons claiming title to the land patented under the act of March 3, 1851 (9 Stat. 631), may bring a suit to declare a trust in said lands. Such suit may be brought in the State courts and without the aid of the Attorney-General. The decision of a State court upon such a suit unappealed from binds the parties thereto, whether righteous or erroneous. 21 Op. 13.

3. When such third persons fail to sue until the period of the statute of limitations of the State has expired, they are barred by their laches from suing thereafter. That they had meanwhile been applying to Congress for relief is immaterial. *Ib.*

4. An appearance by parties to a suit in one jurisdiction does not operate as an abandonment of proceedings instituted by them in another jurisdiction, the parties and cause of action being the same. 21 Op. 447.

5. One may proceed on the same cause of action against the same defendants in as many jurisdictions as he can have service of process executed upon the defendants. *Ib.*

6. One final judgment on the merits rendered in one action can be pleaded in bar in all the others upon the same cause of action. *Ib.*

7. As a recourse to law for the settlement or collection of certain bonds issued by certain States and owned by the United States would involve the grave act of suing a State, and as Congress has had this matter before

it repeatedly and has not directed such a course, the Secretary of the Treasury is advised not to institute suit. 21 Op. 478.

*See also* ARKANSAS, 1, 2.

**AD INTERIM APPOINTMENT.**

*See* ARMY, II, a, 49; PRESIDENT, I.

**ADDITIONAL COMPENSATION.**

*See* UNITED STATES, II, 36-39; OFFICE, AND OFFICERS, VII; UNITED STATES ATTORNEY; UNITED STATES MARSHAL, 7, 8.

**ADDITIONAL DUTY.**

*See* CUSTOMS LAW, IV, f; IX, b.

**ADDITIONAL PAY.**

*See* ARMY, II, d (2); IV, 228, 229.

**ADDITIONAL PERIOD.**

*See* CHINESE, II, 42-44.

**ADMINISTRATION.**

**Payment of an award.**—Where an award was made to M., as surviving partner of the firm of M. & G., and on the subsequent death of M., the representatives of G. demanded to share in the distribution of the award: *Advised* that the administrator of M., the surviving partner in whose name the claim was presented and to whom the award thereon was made, should alone receive payment. 17 Op. 537.

*See also* CUBA, 24; RESERVATIONS AND PARKS, III, 35; and UNITED STATES NAVAL ASYLUM AT PHILADELPHIA, PA.

**ADMINISTRATIVE PRACTICE.**

*See* EXECUTIVE DEPARTMENTS, VI; and ATTORNEY-GENERAL, II, h and i.

**ADMIRALTY.**

*See* PRIZE.

**ADULTERATED SEEDS.**

*See* DEPARTMENT OF AGRICULTURE, VII, 46-48.

**ADVANCEMENT.**

*See* ARMY, II, b; NAVY, II, b.

**ADVANCES.**

*See* CONTRACTS, VI, b; UNIVERSAL POSTAL UNION CONGRESS.

**ADVERTISEMENT.**

*See* CONTRACTS, I, a; EXECUTIVE DEPARTMENTS, IV; DISTRICT OF COLUMBIA, IV; ARMY, I, g; NAVY, I, f; INDIANS, IX; LOTTERY, 8-10, 13.

**AFFIDAVITS.**

*See* NOTARIES.

**AGAÑA.**

*See* GUAM.

**AGRICULTURAL COLLEGES.**

*See* APPROPRIATIONS, 7; PUBLIC LANDS, VI.

**ALABAMA CLAIMS COMMISSION.**

The officers composing the Court of Commissioners of Alabama Claims, reestablished by

the act of June 5, 1882 (22 Stat. 98), were appointed in conformity to the provisions of that act, but were not commissioned for any stated period. That act limited the duration of the court to two years from the time of its organization thereunder; but by the act of June 3, 1884 (23 Stat. 33), its existence was extended to December 31, 1885; and under the latter act the officers of the court continued to perform their duties after the expiration of the two years referred to, without any other appointment than that originally received: *Held* that the limitation upon the duration of the court prescribed by the act of 1882 was not a limitation upon the terms of the officers thereof, and that the court remained after the expiration of the two years limited by that act, by virtue of the act of 1884, a legally constituted body, notwithstanding the officers composing it received no other commissions than those originally given. 18 Op. 298.

**ALASKA.**

1. Section 14 of the act of May 17, 1884 (23 Stat. 28), which prohibits the importation of "intoxicating liquors" into the Territory of Alaska, does not apply to wines imported for sacramental use. 18 Op. 139.

2. The opinion of the Attorney-General of May 15, 1889 (19 Op. 306), does not conflict with the collection of the special tax on retail liquor dealers in the Indian country and Alaska under section 3244, Revised Statutes. 21 Op. 25.

3. The sale of liquors on board of American vessels in Alaskan waters, except upon permit obtained according to law from the customs officials, is a violation of law and the regulations thereunder. 22 Op. 118.

4. Such sales on British vessels may be prohibited under additional Treasury regulations, which may be adopted for that purpose. *Ib.*

5. Use of military force.—The question as to what extent and under what circumstances the military forces of the United States may be used for the protection of life and property in Alaska, considered; and the views expressed in a former opinion, dated April 18, 1889 (19 Op. 293), submitted as covering the question. 19 Op. 368.

6. The laws relating to rational banking associations are by virtue of the act of May 17, 1884 (23 Stat. 24), in force in the Territory of Alaska, and such associations may be lawfully organized in that Territory. 19 Op. 678.

7. **World's Columbian Commission.**—Alaska is a Territory within the meaning of sections 2 and 3 of the act of April 25, 1890 (26 Stat. 62), and, as such, is entitled thereunder to be represented by two commissioners in the World's Columbian Commission. 19 Op. 700.

8. **Alexander Archipelago Forest Reserve.**—Permit for use and occupancy.—The Secretary of Agriculture has authority under the act of June 4, 1897 (30 Stat. 35), to grant a permit for the use and occupancy of certain land within the Alexander Archipelago Forest Reserve, Dall Island, Alaska, for the purpose of conducting a fish saltery, oil, and fertilizer plant. 25 Op. 470.

9. **Same.**—The Secretary may grant such privilege for a longer period than one year, and may charge and collect a reasonable sum for the privilege granted. *Ib.*

10. **Lease of St. Paul and St. George Islands.**—Authority of Secretary of Commerce and Labor.—The act of February 14, 1903 (32 Stat. 829), transferred to the Secretary of Commerce and Labor the same authority over the islands of St. Paul and St. George, Alaska, that was theretofore possessed by the Secretary of the Treasury, and he may therefore lease those islands to the North American Commercial Company for the propagation of blue foxes. 25 Op. 497.

11. **Same.**—The Secretary of Commerce and Labor has authority to lease, for the purpose of propagating foxes, such other islands in the waters of Alaska as had been so leased by the Secretary of the Treasury prior to May 14, 1898. *Ib.*

12. **Same.**—The Secretary of Commerce and Labor has no authority to regulate the killing of fur-bearing animals in Alaska, other than fur-bearing seals. *Ib.*

13.—**Removal of seat of Government to Juneau.**—The ownership and occupation by the United States of a court-house at Juneau, Alaska, by court officials, and the granting of permission by the judge of the first Alaskan judicial district to the governor and surveyor-general of Alaska to use two rooms of such building for offices, does not constitute

such a compliance with the proviso in the act of Congress of June 6, 1900 (31 Stat. 321), as will authorize the Secretary of the Interior to order the removal of the seat of government of Alaska from Sitka to Juneau. 25 Op. 613.

*See also SEAL FISHERIES.*

#### ALEXANDER ARCHIPELAGO FOREST RESERVE.

*See ALASKA, 8.*

#### ALIEN CONTRACT LABOR LAWS.

*See IMMIGRATION III, a.*

#### ALIENS.

1. **Who are aliens.**—An alien who has resided in this country without becoming naturalized, and who departs with the intention of returning, is not to be deemed an immigrant upon his return, although he was an alien immigrant when he first entered the country. 22 Op. 353.

2. Congress has power to exclude aliens altogether from the United States, or to prescribe the terms and conditions on which they may come into this country. *Ib.*

3. **Ownership of real estate in United States.**—The provisions of the act of March 3, 1887 (24 Stat. 476), restricting the ownership of real estate in the Territories to American citizens, etc., apply to mines, they being real estate or inheritable interests in real estate. 19 Op. 26.

4. **Same.**—Stock in a corporation is person-ality, and an alien may, therefore, hold shares of stock issued by an American corporation owning mineral lands in the Territories; but if the holding by aliens exceeds 20 per cent of its stock, such corporation can neither own nor hold thereafter acquired real estate while such holding by aliens in excess of 20 per cent continues. *Ib.*

5. **Same.**—An alien may hereafter advance money for the purpose of developing mining property in the Territories; but he can not thereby acquire any interest in such real estate. *Ib.*



6. **Same.**—An alien may lawfully contract with an American owner to work mines by a personal contract, contract for hire, or a bona fide lease for a reasonable time. *Ib.*

7. **Protection of—Right of master of foreign vessel to shackle alien in port of the United States.**—The master of a foreign vessel has a right, under the laws of the United States, to put in irons an alien on board his ship who is not allowed by law to enter the United States, in order to prevent such person from unlawfully landing; but this may be done only in exceptional cases and where nothing less will prevent the landing of such person. 24 Op. 531.

*See also* IMMIGRATION; CHINESE; PATENTS, 1, 2.

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#### ALLOTMENTS.

*See* INDIANS, III, a.

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#### ALLOWANCE.

BREAKAGE, LEAKAGE, OR DAMAGE TO IMPORTATIONS. *See* CUSTOMS LAW, III, d.

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#### ALTERATION.

OF ENGINEER'S LICENSE. *See* STEAMBOAT-INSPECTION SERVICE, 16.

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#### AMERICAN AND MEXICAN CLAIMS COMMISSION.

*See* CLAIMS, II, 79.

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#### AMERICAN ARTIST.

*See* CUSTOMS LAWS, IV, 245.

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#### AMERICAN EPHEMERIS AND NAUTICAL ALMANAC.

Number of copies authorized to be printed.—The Secretary of the Navy is authorized,

under existing law, to cause to be printed 2,500 copies of the American Ephemeris and Nautical Almanac and 3,182 copies of "the papers supplementary thereto;" and of the American Nautical Almanac, such "additional" copies thereof as he may determine necessary "for the public service and for sale to navigators and others." 24 Op. 663.

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#### AMERICAN REGISTRY.

*See* SHIPPING, I, c.

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#### AMNESTY.

1. The word "amnesty" in the Edmunds Act of March 22, 1882 (22 Stat. 30) was used advisedly with intent to indicate that the President might, by act of Executive clemency, embrace a whole class of offenders, instead of dealing with each case separately. 20 Op. 668.

2. The President has constitutional power, without Congressional sanction, to issue a general pardon or amnesty to classes of offenders. 20 Op. 330, 668.

*See also* PARDON.

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#### ANIMALS.

*See also* HEALTH AND QUARANTINE.

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#### ANNAPOLIS, MD.

SEA WALL. *See* CONTRACT, II, 83.

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#### ANNEXATION.

*See* HAWAII, 2, 34, 40; INTERNATIONAL LAW, 17, 23-25, 28-30.

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#### ANNUAL LEAVE.

*See* LEAVES OF ABSENCE.

**ANNULMENT.**

*See* CONTRACTS, IV.

**ANTI-MOIEITY ACT.**

ACT OF JUNE 22, 1874 (18 Stat. 186). *See*  
CUSTOMS LAWS, IX, h.

**APPEAL.**

1. In case of an appeal to a higher tribunal for review, the original judgment stands in suspense until the appellate court, by a judgment of its own, shall supersede it. 22 Op. 340.

2. An appeal by a Chinese person, taken under section 13 of the act of September 13, 1888 (25 Stat. 479), to a judge of a district court, from the judgment of the commissioner, does not vacate, but merely suspends the judgment of the commissioner and proceedings thereunder until the appeal is dismissed. *Ib.*

3. Appeal from act of an executive officer.—Where a statute imposes a particular duty upon an executive officer, and he has performed the duty according to his understanding of the law, there is no appeal from his action or his decision, unless such appeal is expressly provided by law. His decision is final and conclusive. (*See* 16 Op. 317; 1 Op. 624; 2 *id.* 481-482; 5 *id.* 275; 11 *id.* 14; *United States v. Ferreira*, 13 How. 40). 17 Op. 353.

4. An appeal does not lie to the President to set aside a decision made by the Secretary of the Interior touching the correctness or validity of a resurvey of a private land claim, being the Chariwin grant. 18 Op. 31.

5. The consideration and determination of appeals to the Secretary of the Interior from the Commissioner of the General Land Office may be made by the Assistant Secretary of the Interior, under a regulation prescribed by the Secretary, pursuant to section 439, Revised Statutes. 19 Op. 133.

**APPEARANCE.**

1. An appearance by parties to a suit in one jurisdiction does not operate as an abandonment

of proceedings instituted by them in another jurisdiction, the parties and cause of action being the same. 21 Op. 447.

2. The head of an Executive Department is not legally bound, in obedience to a subpoena of a court, to appear in a suit between private parties and testify to facts which have come to his knowledge officially; but he may appear and give such testimony as he shall deem proper. 25 Op. 326.

**APPOINTMENT.**

*See* ARMY, I, e, 30, 32; II, a, 49; II, b; and II, c, 103, 106, 115; CIVIL SERVICE, II, b, 48, 50; III, d, and V; CONGRESS, III, 24-27; CUSTOMS LAW, II, d; EXECUTIVE DEPARTMENTS II, a, 15-18; b, 27-29, 39-43; MILITARY ACADEMY, 13, 14; NAVAL ACADEMY, 22-28; NAVY, II, a, 25; II, b; and III, b; OFFICE AND OFFICERS, II; POSTAL SERVICE, II, b, 30, 31, 43-45; II, c, 52-54; PRESIDENT, I; PUBLIC BUILDINGS, 26, 27, 37; REVENUE MARINE, II, 11-15.

**APPRAISEMENT.**

*See* CUSTOMS LAW, III, b; IX, e; X, 457, 458, 461.

**APPRAISERS.**

*See* CUSTOMS LAWS II, e.

**APPROPRIATIONS.**

1. After an appropriation has been exhausted, the Secretary of the Navy has no power to incur any obligation for work on an uncompleted drydock, even though immediate action is very important. 21 Op. 288.

2. After an appropriation is exhausted, a contract not for the completion of any specific work, as the erection of a building, the construction of a road, or rendering a channel adequate for the passage of vessels of a certain draft, is at an end. Work done after the

appropriation is exhausted would not come within such a contract. 21 Op. 244.

3. **Same.**—If further appropriations are made, there must be a new contract for their expenditure. *Ib.*

4. The act of July 1, 1898 (30 Stat. 613), making an appropriation "to enable the Secretary of the Treasury to pay" a certain individual a specified amount, being mandatory, the Secretary has no discretion to pass upon the fact whether such amount or any portion thereof ought to be paid. 22 Op. 295.

5. An appropriation "for the expenses of the Geological Survey," not being in terms for the rent of any building or part thereof, can not be used for the payment of rent. 17 Op. 87.

6. The Secretary of State can not lawfully, under the terms of the joint resolution of Congress approved February 25, 1893 (27 Stat. 756), authorize the construction of a wharf different in character from that specified in the resolution, even if from a change in the circumstances the construction of that sort of wharf with that appropriation has become impracticable. 20 Op. 653.

7. The respective appropriations for agricultural experiment stations, act of March 2, 1887 (24 Stat. 440), and for agricultural colleges and schools, act of July 2, 1862 (12 Stat. 503), being separate and distinct, no portion of the appropriation for the former can be applied to the payment of salaries of professors or teachers in the latter. 22 Op. 470.

8. The act of March 3, 1899 (30 Stat. 1128), for deepening the channel north of Pelican Island, from Galveston Harbor to Texas City, Tex., makes an appropriation of \$250,000 for the work. 22 Op. 489.

9. **Same.**—There is no authority for paying out of this appropriation any expenses for making the contract, inspecting or superintending the work, unless it be indirect through a provision in the contract that these expenses shall be paid by the contractors and charged against their compensation. *Ib.*

10. **Appropriation for improvement of Missouri River above Sioux City.**—The Secretary of War has no authority to use any portion of the \$170,000 appropriated by the act of March 3, 1899 (30 Stat. 1147), for the improvement of the Missouri River above Sioux City, for improvements at or in front of that city. 22 Op. 519.

11. The act of March 3, 1899 (30 Stat. 1064), making an appropriation for "transportation of the Army and its supplies," impliedly authorizes the Secretary of War to purchase for the United States such land as in his judgment may be necessary for the erection of the wharf or wharves as contemplated by the appropriation, and the land so purchased can be paid for out of said appropriation. 22 Op. 665.

12. The emergency fund of \$3,000,000 provided by the act of January 5, 1899 (30 Stat. 772), is intended to cover emergencies arising in the military administration of Cuba and other territory that has come into the possession of the United States through the operations of war. 22 Op. 301.

13. **Fortifications act—Range finders.**—The appropriation contained in the fortifications act of May 25, 1900 (31 Stat. 183, 184), for the installation of range and position finders, may be used for the installation of these instruments in Porto Rico. 23 Op. 390.

14. **Revenues collected on importations from Porto Rico—Schoolhouses.**—The act of April 12, 1900 (31 Stat. 77), entitled "An act temporarily to provide revenues and a civil government for Porto Rico," etc., does not repeal, either expressly or by implication, and is not inconsistent with, the act of March 24, 1900 (31 Stat. 51), which appropriates, for the benefit and government of Porto Rico, the revenues collected on importations therefrom prior to January 1, 1900. 23 Op. 329.

15. **Same.**—The President may lawfully direct that a portion of the latter appropriation be used for the purpose of erecting and equipping schoolhouses in that island. *Ib.*

16. **Porto Rican customs revenue.**—The act of March 24, 1900 (31 Stat. 51), which directs that certain Porto Rican customs revenues "shall be placed at the disposal of the President, to be used for the Government now existing and which may hereafter be established in Porto Rico, and for other governmental and public purposes therein, until otherwise provided by law," vests in the Executive the power to place the disbursement of such appropriation under the control of the "administrative authorities" instead of the "executive council." 23 Op. 450.

17. **Appropriation for naval and coaling station.**—The construction of a pier, required in providing a naval and coaling station for

the United States in the harbor of Pago Pago, is within the intent of Congress as expressed in the paragraph of the sundry civil appropriation act of August 5, 1892 (27 Stat. 349), containing the following provision: "For providing naval and coaling stations, \$250,000; to be expended under direction of the President;" and such portion of the \$250,000 as may be needed for building the pier may be lawfully used whenever the President shall so direct. 20 Op. 553.

**18. Same—Lease or purchase of property in Pago Pago Harbor.**—The President may lawfully use such part of the appropriation of \$500,000 provided in the act of February 26, 1889 (25 Stat. 699), for the establishment of a coaling station at Pago Pago Harbor, Samoa, in making and executing contracts for the control of such property in that harbor, whether by lease or purchase, as may in his judgment be necessary for the protection of the interest of the United States. 20 Op. 484.

**19. Support of armies.**—The inhibition of Article I, section 8, clause 12, of the Constitution is confined to appropriations to raise and support armies in the strict sense of the word "support," and does not extend to appropriations for the various means which an army may use in military operations, or which are deemed necessary for common defense. 25 Op. 105.

**20. Expenses of delegates to Pan-American international conference.**—The acts of June 6, 1900 (31 Stat. 637), and March 3, 1901 (31 Stat. 1179), making appropriation for the "expenses of the delegates to the proposed [Pan-American] international conference, and for incidental clerical assistance," do not contemplate or provide for the payment of the expenses or compensation of counsel for the delegates to that conference, the services to be performed by such counsel not being "clerical" in character. 23 Op. 533.

**21. Census Office.**—The unexpended balance of the census appropriation referred to by the proviso in the act of March 3, 1903 (32 Stat. 1059), is available for census purposes, notwithstanding the specific appropriations made therefor by the act of February 25, 1903 (32 Stat. 896). 24 Op. 699.

**22. Where name of claimant is erroneously stated in the act.**—Where an act of Congress in making appropriation for the payment of a

claim incorrectly stated an initial letter in the name of the claimant, *advised* that the claim may be paid, provided its identity with that provided for in the act be clearly established. 18 Op. 501.

**23. Penitentiary at Walla Walla, Wash.**—In view of the fact that the State of Washington already has a penitentiary, the attention of Congress should be called to the matter before any further expenditure is made of money appropriated by the act of March 3, 1893 (27 Stat. 661) for the purpose of the creation of a penitentiary at Walla Walla in supposed conformity with the promise made in section 15 of the act of February 22, 1889 (25 Stat. 680). 21 Op. 352.

**24. The appropriation in the act of March 2, 1895 (28 Stat. 752), for raising the height of the dam at Great Falls and for damages on account of the consequent flooding of land and other injuries was intended to cover all damages that might result from raising the dam 2½ feet higher than had been contemplated under the act of July 15, 1882 (22 Stat. 168).** 21 Op. 223.

**25. The question whether or not the appropriation act of 1896 authorizes the Secretary of the Treasury to purchase newspapers and other articles for use outside of Washington,** in view of sections 192 and 3683 Revised Statutes, is one which should be submitted to the Comptroller of the Treasury under section 8 of the act of July 31, 1894 (28 Stat. 207). 21 Op. 178.

**26. The appropriation for special speed premiums made by the act of July 26, 1894 (28 Stat. 123, 140), is not limited in its application to premiums earned prior to January 1, 1894.** 21 Op. 84.

**27. Transfer and retransfer from one Executive Department to another.**—Where portions of certain funds appropriated by the acts of June 14, 1880 (21 Stat. 193), and of March 3, 1881 (21 Stat. 481), for the construction of dams and reservoirs, were transferred by the Secretary of the Treasury from the books of the War Department to those of the Interior Department for the settlement of damages to Indians occasioned by such construction, and only a portion of the amount thus transferred was used in the settlement of those claims, the unexpended balance may be retransferred to the War Department and again become a part of the original appropriation. 20 Op. 300.

**28. For bringing to United States Americans in foreign countries accused of crimes.**—The French Government may properly be reimbursed from the \$5,000 appropriated by the act of July 16, 1892 (27 Stat. 226), for expenses incurred in conveying to the United States, on requisition of a United States consul, five American seamen charged with murder. 20 Op. 600.

**EXECUTIVE DEPARTMENTS.** *See* the various Departments, I, and the various offices or bureaus of such Departments.

**RIVER AND HARBOR IMPROVEMENT.** *See* NAVIGABLE WATERS, II.

**PUBLIC BUILDINGS.** *See* PUBLIC BUILDINGS.

**EXPOSITIONS AND FAIRS.** *See* EXPOSITIONS AND FAIRS.

**ARTIFICIAL LIMBS.** *See* WAR DEPARTMENT, I. ARMY, ARMY BOARDS, ETC. *See* ARMY, I, f.

**NAVY.** *See* NAVY, I, g; VII.

**REIMBURSEMENT OF NAVY DEPARTMENT APPROPRIATION FOR ORDNANCE FURNISHED REVENUE - CUTTER SERVICE.** *See* NAVY DEPARTMENT, I, 1, 2.

**NAVAL AND COALING STATIONS.** *See* the various stations.

**GUNS, CARRIAGES, ETC.** *See* ARMAMENT AND FORTIFICATIONS.

**INDIAN SCHOOLS.** *See* INDIANS, II, b.

**COLLECTION OF CUSTOMS REVENUE.** *See* CUSTOMS LAW, V, b.

**QUARANTINE SERVICE.** *See* HEALTH AND QUARANTINE, 7.

**CARE AND MEDICAL TREATMENT OF TRANSIENT PAUPERS IN WASHINGTON, D. C.** *See* ARMY, I, f, 36.

**REVENUE-CUTTER SERVICE.** *See* REVENUE MARINE, I.

**LOYAL CREEK FUND.** *See* INDIANS, V, 135-136, 147.

**ERECTION OF MONUMENTS OR MEMORIAL TABLETS.** *See* GETTYSBURG BATTLEFIELD.

**UNEXPENDED BALANCES.** *See* NAVY, III, d, 149; VII, 209, 210; HEALTH AND QUARANTINE, 7.

**For appropriations for any particular object,** *see* appropriate heading for that subject.

#### ARBITRATOR.

*See* DIPLOMATIC AND CONSULAR OFFICERS, II, 14.

#### ARBITRATION.

*See* GENERAL ARBITRATION BOARD.

#### ARENAS KEY ISLAND, MEXICO.

**Jurisdiction—Murder.**—Where the master of an American vessel abandoned three men upon the island of Arenas Key, Mexico, but without opposition on their part, one of whom was killed by another of the three in self-defense: *Advised* that the master and owners of the vessel do not appear to have committed any offense cognizable under the statutes of the United States, and that if a crime was committed by one of the men on the island, it was committed within the jurisdiction of Mexico, and the courts of the United States have no jurisdiction over the same. 19 Op. 391.

#### ARIZONA.

1. The legislative assembly of Arizona Territory can lawfully remain in session only for a period of sixty days' duration, such period including Sundays and all intermediate adjournments. 19 Op. 259.

2. The word "sessions" in section 1852, Revised Statutes, as amended by the act of December 23, 1890 (21 Stat. 312), includes the whole period between the time fixed by law for the meeting of the legislative assemblies and their *sine die* adjournment, Sundays and intermediate adjournments not excepted. *Ib.*

3. *Same.*—Statutory provisions regulating the assembling of Territorial legislatures reviewed; and, upon consideration thereof, *advised* that the governor of Arizona Territory is without power to convene a special session of the Territorial legislature. 19 Op. 319.

4. The act of the legislature of Arizona Territory, approved March 21, 1889, providing for the holding of a convention for the purpose of forming a State constitution to be submitted to the legal voters of the Territory for their approval or rejection, is not inconsistent with the organic act of the Territory or any other law of Congress, or with any provision of the Constitution, and is therefore valid. 19 Op. 335.

5. **Same.**—Whether such legislation is “pre-mature” is a question that addresses itself solely to the legislature that passed, the governor who approved, and to Congress which had the power finally to ratify or annul the measure. *Ib.*

6. **Assignment of judges.**—Under the organic law of the Territory of Arizona and the statutes passed by the legislature thereof, the governor is not invested with power to assign to their respective districts the judges appointed for that Territory. 19 Op. 530.

7. **Same.**—The authority given the governor by section 1873, Revised Statutes, to assign judges, etc., was intended to be exercised only during that period which is embraced between the date of the organization of the Territory and the time when legislative action was had upon the subject-matter referred to in that section. After such action by the legislature the authority terminated and the operation of the section ceased. *Ib.*

#### ARKANSAS.

1. The institution of proceedings on behalf of the United States to recover the title and possession of certain land (part of the Hot Springs Reservation) granted to the county of Garland, Arkansas, for the site of a public building, would not be warranted, for the reason that it is not clear whether the statute donating the land annexes a condition to the grant or creates a mere trust, and for the further reason that the county has brought suit to annul the lease and recover control of the property. 18 Op. 264.

2. **Same.**—In the absence of any action on the part of Congress declaring forfeiture or directing suit, the Attorney-General is not warranted in instituting proceedings to recover to the United States the title and possession of the land granted by section 19 of the act of March 3, 1877 (19 Stat. 380), to the county of Garland, Ark., for a public building site. 20 Op. 307.

3. The State of Arkansas is not liable for interest on certain interest-bearing bonds of that State after their maturity. (*United States v. North Carolina*, 136 U. S. 211, followed.) 21 Op. 135.

LAWS IN FORCE IN THE INDIAN TERRITORY—  
DISTRIBUTION OF LOYAL CREEK FUND. *See*  
INDIANS, V, 147.

#### ARMAMENT AND FORTIFICATIONS.

1. **Contract—Royalty on guns and carriages—Appropriation for armament of fortifications.**—The United States is authorized to enter into a contract for the payment of royalty on account of the construction of certain guns, carriages, etc., payable out of appropriations “for the armament of fortifications, and for other purposes,” approved May 25, 1900 (31 Stat. 185), March 1, 1901 (31 Stat. 874), and June 6, 1902 (32 Stat. 308), notwithstanding the fact that the fulfillment of such contract might extend over a period of more than two years. 25 Op. 105.

2. **Same—Support of armies.**—The inhibition of Article I, section 8, clause 12, of the Constitution is confined to appropriations to raise and support armies in the strict sense of the word “support,” and does not extend to appropriations for the various means which an army may use in military operations, or which are deemed necessary for common defense. *Ib.*

3. The contract with the Pneumatic Gun Carriage and Power Company for the construction of a disappearing gun carriage, under the act of August 1, 1894, makes no provision for the payment of a premium and does not bind the Government beyond the amount appropriated. 21 Op. 457.

4. Pursuant to the act of June 6, 1896 (29 Stat. 256, 261), the Secretary of War entered into a contract for the construction of a certain type of gun, for which 85 per cent of the sum appropriated was to be paid as the work progressed, and the remainder upon its completion and test. The gun was completed and successfully stood the regular proof test, but upon recommendation of the Board of Ordnance it was subjected to the ordnance test of being fired 300 times, and, as a result, on the fifteenth round the gun was destroyed. *Held*, that the contractor was entitled to the final payment, as neither the statute nor the contract made it necessary that the gun should be capable of any particular performance, nor that it should successfully withstand any test

of strength; and the payment therefore, was not dependent upon any such performance or test. 22 Op. 465.

ARMAMENT OF VESSELS. *See* NAVY, VII, 208.

CLAIMS FOR ROYALTY. *See* CLAIMS, I, h, 74, 75.

#### ARMOR PLATE ROYALTY.

*See* CLAIMS, I, h, 74, 75.

#### ARMS.

*See* ARMY, III, 220-223; SOUTH CAROLINA.

#### ARMSTRONG FUND.

*See* CLAIMS, I, b, 13-28.

#### ARMY.

##### I. In General.

- a. *Use of*, 1-9.
- b. *Enlistment — Reenlistment — Discharge*, 10-15.
- c. *Enlisted men*, 16-26.
- d. *Medals*, 27-29.
- e. *Army Posts — Exchanges — Canteens*, 30-34.
- f. *Appropriations*, 35-37.
- g. *Supplies—Purchase of*, 38-39.

##### II. Officers.

- a. *In General*, 40-54.  
Secretary of War *see* War Department IIa.
- b. *Appointment, Promotion, Transfers, etc.*, 55-90.
- c. *Resignation, Retirement, Dismissal, etc.*, 91-128.
- d. *Rank and Pay, etc.*:
  1. *Rank*, 129-152.
  2. *Pay—Pay Accounts*, 153-179.
  3. *Commutation for Quarters—Mileage, etc.*, 180-188.
- e. *Civil Office or Employment*, 189-191.
- f. *Civil Service*, 192.

##### III. Volunteer Army—Militia, 193-225.

##### IV. Signal Corps, 226-229.

##### V. Engineer Corps, 230, 231.

##### VI. Summary Court, 232.

Courts-Martial. *See* Courts-Martial.

##### VII. Military Commission, 233.

##### VIII. Army Regulations and General Orders, 234-238.

##### IX. Articles of War, 239-241.

##### X. Examining Board, 242-244.

##### XI. Army Board, 245.

##### XII. Civil Authorities, 246.

##### I. In General.

###### a. *Use of.*

1. **Suppression of unlawful organizations—Cowboys.**—Section 15 of the act of June 18, 1878 (20 Stat. 152), renders unavailable the aid of the military forces of the United States for the suppression of unlawful organizations, unless the state of facts be such as to enable these forces to be used under the provisions of section 5287 or of sections 5298 and 5300, Revised Statutes. 17 Op. 242.

2. **Same.**—Upon consideration of the facts stated: *Advised* that the military forces of the United States may be employed under section 5298, Revised Statutes, after proclamation as required by section 5300, Revised Statutes, to aid in the execution of the laws and for the suppression of combinations of outlaws and criminals in the Territory of Arizona, without the need of further legislation. 17 Op. 333.

3. **Employment of, to aid marshal for Indian Territory.**—It is competent for the President, under section 5298, Revised Statutes, to direct the military forces to render the marshal for the Indian Territory such aid as may be necessary to enable him to maintain the peace and enforce the laws of the United States in that Territory, but the marshal himself cannot call on the troops for aid, their use as a *posse comitatus* being forbidden by section 15 of the act of June 18, 1878 (20 Stat. 145, 152). 19 Op. 293.

4. The troops of the United States can not be employed in the Indian Territory to aid in the preservation of peace and the arrest of alleged "outlaws" and "bandits," unless such persons are illegally intruding or attempting to intrude upon the Indian country, or are ab-

sconding offenders within the provisions of section 2152, Revised Statutes. 21 Op. 72.

5. **Employment of United States troops in Alaska.**—The question as to what extent and under what circumstances the military forces of the United States may be used for the protection of life and property in Alaska, considered; and the views expressed in a former opinion, dated April 18, 1889 (19 Op. 293), submitted as covering the question. 19 Op. 368.

6. **Troops of the United States can net, without violating the provisions of section 15 of the act of June 18, 1878 (20 Stat. 152), be employed as a posse comitatus, to aid the United States marshal or his deputies in arresting certain persons in the State of Kentucky charged with robbing an officer of the Government.** 17 Op. 71.

7. **Power to enforce civil rights not abridged.**—The provision in section 15 of the act of June 18, 1878 (20 Stat. 145, 152), forbidding the employment of the Army as a posse comitatus for the purpose of executing the laws, does not abridge the power to use any part of the land or naval forces, or militia, for the purposes set forth in section 1989, Revised Statutes, relating to the enforcement of civil rights. 19 Op. 570.

8. **In the distribution of supplies to the destitute inhabitants of Cuba, under the provisions of section 1 of the act of May 18, 1898 (30 Stat. 419), the commanding officers of the Army may use either army officers or such other volunteer agencies as may be available for the purpose, and the field of their operations is not necessarily restricted to the territory over which they exercise actual control.** 22 Op. 190.

9. **Same.**—Notwithstanding the signing of the protocol and the suspension of hostilities, a state of war still exists between this country and Spain, as peace can only be declared pursuant to the negotiations between the authorized peace commissioners.

b. *Enlistment—Reenlistment—Discharge.*

10. **The enlistment of white men in colored regiments is prohibited by implication by sections 1104 and 1108, Revised Statutes.** 17 Op. 47.

11. **Reenlistment—Must have served in the Army.**—A man can not be reenlisted as a pri-

vate under the act of February 27, 1893 (27 Stat. 478), unless he has served as such in the Army for twenty years. **Service in the Navy can not be so counted.** 20 Op. 684.

12. **Reenlistment.**—A convicted deserter from the Army, undergoing sentence, must become the recipient of Executive clemency and must make application for reenlistment before the question of the effect of the President's pardon upon his right to reenlist can arise. 21 Op. 568.

13. **Enlistment—Former service.**—A recruiting officer has the right to reject a candidate for enlistment in the Army whose service during his previous term was not honest and faithful, notwithstanding the pardon of the offense. 22 Op. 36.

14. **Reenlistment during desertion.**—A soldier who enlisted for three years in August, 1862, who deserted in a short time and then reenlisted in October, 1862 for nine months and served faithfully and was discharged and was then arrested in January, 1864, for desertion, was admitted to a hospital and again deserted, is, by his second desertion, barred of relief under the act of March 2, 1889 (25 Stat. 869). 20 Op. 288.

15. **Where deserter voluntarily returns—Discharge.**—Where a person entered the military service in August, 1862, as a volunteer, to serve for three years, and subsequently deserted, but afterwards voluntarily returned to service under the President's proclamation (of pardon) of March 11, 1865, and was mustered out of service along with his company July 2, 1865: *Advised* that the time which elapsed between his desertion and his return should not be credited to him in a discharge or otherwise, but that he is entitled to have his actual service credited to him in an honorable discharge. 18 Op. 427.

c. *Enlisted men.*

16. **Excess of payment to soldier—Mistake of law.**—A soldier should not be held accountable for money paid him in excess of the amount to which he was entitled, where such payment was made through a mistake of law on the part of the executive officers of the Government. 21 Op. 323.

17. **Promotion—Assignment.**—The President has authority to assign enlisted men of the Army, who have passed the examination as candidates for commissions, to vacancies



that may exist in any corps or arm of the service in which they have been commissioned, notwithstanding the fact that additional lieutenants remain in other corps unassigned. 21 Op. 491.

**18. Promotion—Limitation.**—The Secretary of War has no authority to make a regulation limiting to a specified time, expiring on a given date, the right of promotion of an enlisted man who holds the certificate of eligibility provided by the act of July 30, 1892 (27 Stat. 336). 22 Op. 54.

**19. Same.—Can not require second examination.**—A regulation can not be promulgated requiring a successful candidate who holds such certificate of eligibility to undergo a second examination after a specified time. *Ib.*

**20. Same.**—The fact that such eligible has become 30 years of age does not vacate his right to promotion under the act. *Ib.*

**21. Promotion.**—A soldier who passes a successful examination and becomes the holder of a certificate under the provisions of the act of July 30, 1892 (27 Stat. 336), is entitled, under that act, to promotion as second lieutenant after the graduates of the Military Academy shall have been provided for and assigned. 22 Op. 57.

**22. Promotion.**—Under the facts presented, there has been no definite conclusive finding or ascertainment that Sergt. A. D. Sydenham, the holder of a certificate of eligibility under the act of July 30, 1892 (27 Stat. 336), was physically disqualified to perform military service, the weight of evidence being that he is physically qualified. Consequently he is entitled to the benefits accorded him in that act unless he is now shown to be physically disqualified by a legally constituted army medical board. 22 Op. 91.

**23. Same.**—Although a soldier is primarily entitled to promotion by reason of a certificate of eligibility, yet, if he is in fact disqualified to perform military service by reason of physical disability, this would operate to disbar him. *Ib.*

**24. Pay and allowance.**—Section 35 of the draft act (act of March 3, 1863—12 Stat. 736), prohibits allowance of extra pay to soldiers for special services rendered between September 1, 1863, and October 20, 1863. 20 Op. 18.

**25. Same.**—The question is not affected by the fact that in the act of February 9, 1863

(12 Stat. 643), an appropriation was made for such services rendered during the fiscal year, July 1, 1863, to June 30, 1864, for the reason that section 35 of the draft act, passed three weeks later, above considered, took away any authority impliedly conferred by this appropriation. (10 Op. 472, overruled; 15 Op. 362, followed.) *Ib.*

**26. General service messengers—Compensation.**—Not entitled to the \$2 additional compensation monthly for distinguished service allowed under section 1285, Revised Statutes.—A private soldier who received a certificate of merit from the President for distinguished services, which entitled him, under section 1285, Revised Statutes, to "additional pay at the rate of \$2 per month," is not entitled after his discharge as such private soldier, and enlistment as a "general service messenger," under the act of July 29, 1886 (24 Stat. 167), to receive the \$2 per month in addition to his compensation as general service messenger, the act of 1886 expressly providing that such messengers shall receive no other compensation, pay, or allowance except in the specific instance therein named. 19 Op. 471.

ARTIFICIAL LIMBS. See ARTIFICIAL LIMBS.

PENSIONS. See PENSIONS.

RETAINED PAY. See TREASURY DEPARTMENT, II, h, 131.

VOLUNTEERS. See ARMY, III.

d. Medals.

**27. Delay in presenting claim.**—A claim for a medal of honor under the act of March 3, 1861 (12 Stat. 751) should not be entertained where there is an unexplained delay of twenty-eight years in presenting the claim and it is unaccompanied by any official evidence of the statements made. 20 Op. 421.

**28. Where applicant is not in military service when the case reaches the President for consideration.**—Under section 6 of the act of March 3, 1863 (12 Stat. 751), the President may present a medal of honor to an officer or private in the military service of the United States who has distinguished himself in action, notwithstanding he is not in the military service at the time the case reaches the President for consideration, provided the application or recommendation therefor was made while he was in the military service. 24 Op. 580.

**29. Same.**—A medal of honor can not be awarded where the application or recommendation therefor is made after the officer or private has been discharged from the military service. *Ib.*

*e. Army Posts—Exchanges—Canteens.*

**30. Post-trader—Appointment.**—Where one person had been appointed post-trader for a certain military post, and subsequently, on a change in the location of the post, another person was appointed post-trader for the same post: *Held* that as the law allows but one post-trader to be appointed for a military post, the second appointment must be deemed to work a revocation of the first, and accordingly that the last appointee is entitled to the place. 17 Op. 424.

**31. Same.**—Opinion of May 19, 1877 (15 Op. 278), that a post-trader is simply a person licensed by the Secretary of War, etc., concurred in. *Ib.*

**32. Post-trader—Appointment—Removal.**—While under section 3 of the act of July 24, 1876 (19 Stat. 100), a post-trader can not be appointed by the Secretary of War excepting on the recommendation of a council of administration appointed by the commanding officer of the post, yet he may be removed by the Secretary without the concurrence of the council of administration and commanding officer. 17 Op. 517.

**33. Post exchanges—Canteens.**—Under section 17 of the act of March 2, 1899 (30 Stat. 981), no officer or private soldier can be detailed in the canteen section of post exchanges to sell intoxicating drinks, either directly or indirectly, nor can a license or permission be given by the commanding officer to a private person to sell liquors in any encampment, fort, or premises used for military purposes by the United States. 22 Op. 426.

**34. Same—Employment of civilians.**—Section 17 does not, however, prevent the continuance of the sale of intoxicating drinks through the canteen section of the post exchanges as heretofore organized, by civilians employed for that purpose. *Ib.*

*f. Appropriations.*

**35. Board to examine improvements of ordnance and projectiles—Appropriations—Ex-**

**penses.**—The appropriation made by the act of March 3, 1881 (21 Stat. 468), in the provision authorizing the creation of a board of army officers to make examinations of improvements of heavy ordnance and projectiles, is applicable to expenses necessarily incurred by the board in performing the duties devolved thereon, among which the actual and necessary expenses of its members for board and lodging and for traveling while so engaged may be fairly included. 17 Op. 252.

**36.** The act of July 7, 1884 (23 Stat. 194, 220), making an appropriation "for the care, support, and medical treatment of seventy-five transient paupers, medical and surgical patients in the city of Washington, under a contract to be made with such institution as the Surgeon-General of the Army may select," etc., authorizes that officer, within the limits of such appropriation, to contract with one or more hospitals, as in his judgment will best fulfill its purposes. 18 Op. 33.

**37. Army transportation—Purchase of land for wharves.**—The act of March 3, 1899 (30 Stat. 1064), making an appropriation for "transportation of the Army and its supplies," impliedly authorizes the Secretary of War to purchase for the United States such land as in his judgment may be necessary for the erection of the wharf or wharves contemplated by the appropriation, and the land so purchased can be paid for out of said appropriation. 22 Op. 665.

*g. Supplies—Purchase of.*

**38. Emergency purchases.**—Purchases of supplies for the Army made in open market after advertisement, where no bids have been received in response to such advertisement, are emergency purchases within the meaning of the act of July 5, 1884 (23 Stat. 109), and should be "at once reported to the Secretary of War for his approval." 18 Op. 349.

**39. Same.**—When parts of machinery or of stoves or ranges or patented articles are needed, such articles are required by that act to be purchased in the same way as other quartermaster's supplies—that is, by contract after advertisement, except in cases of emergency, in which cases the purchases are to be reported to the Secretary of War for approval. *Ib.*

## II. Officers.

a. *In General.*

Secretary of War. See War Department II, a.

**40. Judge-advocate—Brevet commission—Transfer from volunteer to regular service.**—A judge-advocate, appointed in the volunteer service under the act of July 17, 1862 (12 Stat. 597), with the rank of major, and afterwards, but prior to the act of July 28, 1866 (14 Stat. 332), as amended by the act of February 25, 1867 (14 Stat. 410), brevetted a lieutenant-colonel and also a colonel of volunteers, by which later acts he became transferred from the volunteer to the regular service, is not entitled to have such brevets treated as brevets in the regular service. 17 Op. 3.

**41. Same.**—The acts of 1866 and 1867 produced no effect upon the brevet commissions in the volunteer service previously conferred. Such brevets can not be treated as brevets in the regular service. *Ib.*

**42. Judge-advocate—Brevet commission.**—On reconsideration, the opinion of January 13, 1881 (17 Op. 3), holding that the brevets of Major Winthrop, judge-advocate, in the volunteer force, could not be treated as brevets in the Regular Army, reaffirmed. 17 Op. 46.

**43. Surgeon-General — Appropriation for medical treatment of paupers—Contracts for.**—The act of July 7, 1884 (23 Stat. 194, 220), making an appropriation "for the care, support, and medical treatment of 75 transient paupers, medical and surgical patients in the city of Washington, under a contract to be made with such institution as the Surgeon-General of the Army may select," etc., authorizes that officer, within the limits of such appropriation, to contract with one or more hospitals, as in his judgment will best fulfill its purposes. 18 Op. 33.

**44. Surgeon-General.**—The acceptance by a surgeon of the United States Army of an appointment as Chief of the Record and Pension Office of the War Department, with the rank and pay and allowance of a colonel, creates a vacancy in the former office. 20 Op. 427.

**45. Assistant Surgeon-General — Appointment—What officers eligible.**—A vacancy existing in the office of Assistant Surgeon-Gen-

eral may be filled by appointing thereto any one of the surgeons with the rank of colonel or the chief medical purveyor (all of whom hold offices of the same grade in the medical corps as that of the vacant office), or by promoting thereto the senior officer in the Medical Corps having the rank of lieutenant-colonel, which is the next grade below. 17 Op. 465.

**46. Same.**—No officer possesses an *inchoate right* to the vacant office of Assistant Surgeon-General. The senior surgeon among those holding the rank of lieutenant-colonel, however, has a right to the vacancy in the grade to which that office belongs; so that the office can not be filled by an appointee from an inferior grade other than himself. *Ib.* (469).

**47. Quartermaster - General's assistant—Rank.**—Section 11 of the act of March 2, 1899 (30 Stat. 979), takes from the four principal assistants of the Quartermaster-General the rank of colonel and the increased rank of the Quartermaster on the staff of the Commanding General of the Army, given them by the act of July 7, 1898 (30 Stat. 715). 22 Op. 381.

**48. Inspector-General's Department.**—The act of December 12, 1878 (20 Stat. 257), limits the nomination of brigadier-general in the Inspector-General's Department to the senior officer of that Department. Provisions of that act compared with those of section 1193, Revised Statutes, and distinction between them indicated. 17 Op. 2.

**49. Paymaster-General—Ad interim appointment.**—A vacancy in the office of Paymaster-General, created by retirement, may be filled by an *ad interim* appointment or assignment under the provisions of section 179, Revised Statutes, said retired officer may be said to be "absent" within the meaning of that section. 19 Op. 500.

**50. Paymaster's Department. — Relative rank in the Paymaster's Department of the Army, as between officers having the same grade and date of appointment and commission, was regulated by the act of March 2, 1867, 14 Stat. 434 (secs. 1219 and 1292, Rev. Stat.), and was determined by length of service as a commissioned officer, computed according to the provisions of that act. 17 Op. 10.**

**51. Same.**—Except as between such officers as have the same date of appointment and commission, the matter of relative rank was left by that act to be governed by the

dates of the commissions under which the officers are at the time serving. *Ib.*

*See also* ARMY II, d, 2—Pay accounts of officers.

**52. Paymaster of the Army—Payment to a soldier of his retained pay.**—The accounting officers of the Treasury should allow a paymaster of the Army credit for payment made by him to a soldier of his retained pay under section 1281, Revised Statutes, where the latter has received an honorable discharge, although it may appear that after enlisting the soldier deserted, but was restored to duty without trial and served out the full term of his enlistment. 19 Op. 567.

**53. An Army quartermaster may lawfully pay the accounts of land-grant railroads for army transportation without previous action thereon by the accounting officers of the Treasury.** 19 Op. 264.

*See also* TREASURY DEPARTMENT, II, h.

**54. Professors at the Military Academy at West Point are commissioned officers of the Army and entitled to pension under section 4693, Revised Statutes.** 17 Op. 359.

b. *Appointment, Promotion, Transfer, etc.*

**55. Appointment applies to original entry and not to promotion thereafter.**—The word "appointment," as used in section 1219, Revised Statutes, applies only to the original entry of an officer of the Army into the regular service or his subsequent appointment by selection, and does not include his appointment on promotion thereafter made. 17 Op. 196.

Opinion of Attorney-General Devens, of Feb. 21, 1881 (17 Op. 34), dissented from. *Ib.*

**56. Appointment—Original vacancy.**—A, a captain in a regiment of volunteer infantry authorized to be raised by the act of March 2, 1899 (30 Stat. 977), was appointed on June 14, 1901, a quartermaster in the Army, with the rank of captain, to rank as such from February 2, 1901. He accepted the appointment on June 27, 1901, and resigned on July 8 following. B, a captain of cavalry in the line of the Army was detailed in the Quartermaster's Department to fill the vacancy thus created, such detail being made under authority conferred by section 26 of the act of February 2, 1901 (31 Stat. 755). *Held* that the vacancy thus created is not an original vacancy which can be filled by the appointment of a person

similarly qualified, but must be filled by detail under the provisions of section 26 of the last-mentioned act. 23 Op. 574.

**57. Same—Captain in the Quartermaster's Department—Confirmation of Senate not necessary.**—It being the intention of Congress, as expressed in the sixteenth section of that act (31 Stat. 751), not to require confirmation of appointments in the grade of captain in the Quartermaster's Department, the appointment of Captain A was not a recess appointment, the concurrence of the Senate was not necessary, and the action of the President alone constituted a final and complete appointment. *Ib.*

**58. Same—Subsequent vacancies must be filled by promotion.**—The only vacancy which the President is authorized to fill under sections 16 and 26 of that act is an original vacancy. After such vacancy has been filled there is no longer an original vacancy in that particular place, and any subsequent vacancy must be filled by promotion or by detail. *Ib.*

**59. Appointment of officers in Volunteer Army.**—Where less than a majority of the members of a State militia organization enlist in the Volunteer Army of the United States under the act of April 22, 1898 (30 Stat. 361), they can not be said to have enlisted "in a body;" and the provision of the act as to the appointment of officers by governors does not apply. 22 Op. 146.

**60. Same.—The term "officers" in the provisions of the above-named statute, authorizing the appointment in certain cases of militia officers to corresponding grades in volunteer organizations, applies to commissioned officers only.** *Ib.*

**61. Same.—Officers of militia organizations are entitled to appointments of corresponding grades in the Volunteer Army even though the former were raised and organized in consequence of and subsequent to the call of the President for volunteers.** *Ib.*

*See also* ARMY, III.

**62. Same.—Where a volunteer regiment is made up of separate companies or battalions contributed by two or more States, the governor of each State is entitled to appoint the officers of the companies or battalions by them respectively contributed, but the regimental officers would be appointed by the President. The same would apply to battalions similarly constituted.** *Ib.*

**63. Same.**—In all cases where appointments to such organizations are to be made by the President, the same law as to number and rank of officers applies that applies to regiments of the Regular Army. *Ib.*

**64. Reappointment of Rev. Charles M. Blake as post chaplain.**—It is not competent for the President, with the concurrence of the Senate, now (in May, 1881) to reappoint Rev. Charles M. Blake a post chaplain in the Army as of the 28th day of September, 1878, so as to entitle him to pay from that date. 17 Op. 97.

**65. Acceptance.**—A former army officer appointed from civil life to the position of major of engineers in the Army, under the act of February 14, 1889 (25 Stat. 670), and thereupon placed on the retired list of the Army as of that grade, must take the oath required by section 1756, Revised Statutes, which act would be in law a legal acceptance of the office, and, as such, a sufficient formal acceptance. 19 Op. 283.

**66. The acceptance of an appointment as Chief of the Record and Pension Office of the War Department,** with the rank and pay and allowance of a colonel, by a surgeon of the United States Army creates a vacancy in the former office. 20 Op. 427.

**67. Nomination for advancement—Deceased retired army officer—Approval of Senate.**—The President may send to the Senate for approval of his action the names of officers on the retired list of the Army nominated by him for advancement under the act of April 23, 1904 (33 Stat. 264), after the adjournment of the last session of Congress, but who died before the convening of the present session; and, upon approval by the Senate, the personal representatives of the deceased officers will be entitled to receive the advanced pay due such officers without further action by Congress. 25 Op. 312.

**68. Same.**—Where, however, a person is appointed to office either during a session or in a recess of the Senate and dies before confirmation, his personal representatives must be remitted to Congress for the payment of salary earned by such officer. *Ib.*

**69. Same.**—The opinion of July 11, 1904 (25 Op. 185), holding that an advancement under the act of April 23, 1904, of an officer on the retired list of the Army does not create or constitute an office and is not accomplished

by an exercise of the appointing power, confirmed. *Ib.*

**70. Promotion is a mode of appointment,** and it is not less an appointment because the person promoted has previously held another appointment in the service. 17 Op. 34. (But see 17 Op. 196).

**71. Promotion—Assistant Surgeon-General—What officers eligible.**—The vacancy existing in the office of assistant surgeon-general may be filled by appointing thereto any one of the surgeons with the rank of colonel or the chief medical purveyor (all of whom hold offices of the same grade in the Medical Corps as that of the vacant office), or by promoting thereto the senior officer in the Medical Corps having the rank of lieutenant-colonel, which is the next grade below. 17 Op. 465.

**72. Same.**—No officer possesses an *inchoate right* to the vacant office of assistant surgeon-general. The senior surgeon among those holding the rank of lieutenant-colonel, however, has a right to the vacancy in the grade to which that office belongs; so that the office can not be filled by an appointee from an inferior grade other than himself. *Ib.* (469).

**73. Promotion—Transfer.**—Where there are two or more offices of the same grade in a corps, each requiring a separate commission, on a vacancy occurring in such grade the rules of promotion do not preclude the appointing power from determining to which of these offices the senior in the next grade below shall be appointed. An incumbent of one of them may be transferred by appointment to another which is vacant without prejudicing the rights of such senior, whose claim to promotion would be fully met by appointing him to either. 17 Op. 465.

**74. Promotion—Claim based upon errors in former promotions.**—Where a lieutenant-colonel, though his commission is junior in date to that of another lieutenant-colonel, claims that he is entitled to the next colonelcy over the latter, by reason of errors committed in his promotion in 1847 and 1867: *Advised* that such errors, if any, can not now be rectified by disregarding the fact that the latter, in virtue of his present commission, is senior to the former in the line of promotion, and that his claim is therefore inadmissible. 17 Op. 611.

**75. Promotions.**—There is no warrant for holding that promotions are appointments

where the officers promoted are in different departments of the Marine Corps, but are not appointments where they are in the same department. 24 Op. 74.

76. **Promotion.**—The rule prescribed in paragraph 20, **Army Regulations of 1863**, by which "promotions to the rank of captain shall be made regimentally," is not in conflict with the provisions of section 1204, **Revised Statutes**, and remains in full force. 17 Op. 65.

77. **Same.**—The regulations and legislation concerning the promotion of subaltern company officers, from the year 1801 to the present time, reviewed, and the practice thereunder stated. *Ib.*

78. **Muster.**—The first proviso of the act of February 24, 1897 (29 Stat. 593), which provides for the constructive muster into the service of the United States of certain persons who were appointed or commissioned to be officers in the volunteer service during the rebellion, requires as a basis of favorable action that there should have existed at the date from which such person was to take rank a vacancy to which he could legally have been appointed. No provision was made for the case of a vacancy occurring after the date from which an officer was to take rank. 23 Op. 332.

79. **Same.**—"Vacancy."—The word "vacancy" means a legal vacancy, one "to which he could be appointed or commissioned" in accordance with the then existing law and regulations. *Ib.*

80. **Same.**—The rank of an officer constructively mustered into the service under the provisions of this act does not fluctuate with the changed conditions of his command. He is such an officer *de facto* and *de jure*, without limitation of time or condition, and is to be recognized as such until he is promoted, discharged, or is disposed of in some other manner provided by law. *Ib.*

81. **Same.**—Vacancy must have existed at time of appointment.—The second proviso requires that a vacancy in the grade to which he was appointed must have existed at the time of his appointment or commission. *Ib.*

82. **Same.**—Strength of command.—The third proviso requires that the command must not have been below its minimum strength on the date from which he was to take rank by the terms of his appointment. *Ib.*

83. **Assignment.**—The Secretary of War is authorized to assign recent graduates of the **United States Military Academy**, noncommissioned officers, and civilians to the cavalry or infantry, although "additional" second lieutenants remain in the engineers and artillery, and no vacancies exist in the last-named branches. 20 Op. 149.

84. **Same.**—The words "such arm or corps" in the act of May 17, 1886 (24 Stat. 50), refer to the arm the duties of which the graduate has been adjudged competent to perform. *Ib.*

85. **Same.**—The word "vacancy" used in the act contemplates a vacancy in the arm of the service in which the additional second lieutenant is then commissioned. *Ib.*

86. **Detail.**—It is within the discretion of the President, under the act of November 3, 1893 (28 Stat. 7), to make the detail of officers of the Army for colleges wholly from the active list of the Army, or wholly from retired officers who, "upon their own application," may be detailed for those services, or from both lists in such proportion as he sees fit and the applications for such detail from the retired officers will allow. 20 Op. 687.

87. **Same.**—No other limit than 100 is set to the number of such officers that can be detailed from either list. *Ib.*

88. **Same.**—The "five years' service in the Army," required by section 1225, **Revised Statutes**, as well as the limit of detail to four years, applies to officers detailed from either list. *Ib.*

89. **Same.**—Officers of the retired list detailed for college duties prior to November 3, 1893, and still on duty under such detail, are entitled to full pay, beginning from the passage of the act. *Ib.*

90. **Same.**—Section 1260, **Revised Statutes**, refers to additional compensation from the United States, not from the colleges. *Ib.*

#### c. *Resignation, Retirement, Dismissal, etc.*

91. **Resignation—Acceptance.**—The resignation of a military officer does not take effect until accepted by the proper superior authority. 22 Op. 237.

92. **Retirement.**—An aggravation of a disease from jolting in a saddle during active service is not "wounds received in battle," within the meaning of section 32 of the act of July 28, 1866 (14 Stat. 337), which pro-

vides for the retirement of army officers upon the full rank of the command held by them at the time such wounds were received. 17 Op. 7.

**93. Same.**—The opinion and recommendation of an examining board, made under a misconception of the law, can not control distinct statutory provisions, as in section 32, which limits retirements to instances where the disability was "occasioned by wounds received in battle." *Ib.*

**94. Retirement—Insanity—Subsequently wholly retired—Restoration to retired list.**—Where an officer in the Seventh Infantry, having been found by a retiring board "incapacitated for active service from insanity, which insanity is not incident to the service," was retired, by direction of the President, "on pay proper alone," under the act of August 3, 1861, and subsequently, upon request of the officer, the order of retirement was, by direction of the President, so amended as to wholly retire him from service with one year's pay and allowances, and on a still later date, by direction of the President, the order wholly retiring the officer was declared void on the ground that the officer was insane when he requested it; and he was restored to the retired list in accordance with the original order: *Advised* that after the President had once acted upon the finding of the retiring board by placing the officer on the retired list with pay proper alone, his power over the case was exhausted, and the subsequent order wholly retiring him was void for want of authority; and that therefore the officer is entitled to be borne on the retired list conformably to the order retiring him on pay proper alone. 19 Op. 203.

**95. Retirement.**—An examination of a lieutenant of the Army by an examining board to determine his fitness for promotion, by which it was found that he was incapacitated for active service on account of certain physical disabilities, which findings were approved by the proper military authorities, but not by the President, was not such an examination as is required by law for the retirement of an officer from active service. 21 Op. 385.

**96. Same.**—No officer can be retired from the Army upon the report of any board, even if approved by the Secretary of War, except it is also approved by the President. *Ib.*

**97. Same.**—If he recovers from such disabilities, the Secretary of War may allow him a reexamination for promotion. *Ib.*

**98. Same.**—A board constituted as a board of examination for promotion can not be invested with power of a retiring board, which the law requires to be differently constituted. *Ib.*

**99. Retirement—Age limit.**—An officer of the Regular Army, holding at the same time a commission as a general in the Volunteer Army, under section 11 of the act of April 22, 1898 (30 Stat. 363), may continue to hold and exercise his commission in the Volunteer Army after having been placed upon the retired list by reason of the age limit. 22 Op. 176.

**100. Retirement—Age.**—The act of June 20, 1882 (22 Stat. 117), relative to retirement, applies to an officer of the Regular Army who is 64 years of age, temporarily serving under a volunteer commission, without affecting his status in the volunteer service, but does not apply to a volunteer officer, not in the Regular Army, who is 64 years of age. 22 Op. 199.

**101. Same.**—The volunteer service contemplated by the above and similar acts was clearly the volunteer service of the civil war, and can not be held to be prospective and to have anticipated a new volunteer service. *Ib.*

Opinion of August 3, 1899 (22 Op. 176), reaffirmed.

**102. Retirement—Executive action after statute repealed.**—The President has no power to retire Lieutenant-Colonel Freudenberg with the rank and pay of colonel of infantry from the date of his first retirement, December 15, 1870. Mistakes, if any, made in the execution of an act which is subsequently repealed can not be rectified by Executive action after such repeal. 17 Op. 60.

**103. Retired officer accepting civil position.**—A former army officer appointed from civil life to the position of major of engineers in the Army under the act of February 14, 1889 (25 Stat. 670), and thereupon placed on the retired list of the Army as of that grade, must take the oath required by section 1756, Revised Statutes, which act would be in law a legal acceptance of the office and, as such, a sufficient formal acceptance. 19 Op. 283.

**104. Same.**—The provisions of sections 1259, 1763, 1764, and 1765, Revised Statutes,

do not require the annulment of the appointment held by such officer as agent in charge of river and harbor work at Wilmington, Del., and that he be relieved from that work. *Ib.*

105. **Same.**—A retired officer of the Army is not ineligible to hold an appointment to a civil office. *Ib.*

106. **Retirement after acceptance of civil office—Captain Badeau.**—An army officer who was appointed assistant secretary of legation at London, and after acceptance was placed on the retired list as a captain, and later became consul-general, his name being borne on the retired list continuously from May 25, 1869, the date of his retirement, to May 7, 1878, when he was dropped from the Army under section 1223, Revised Statutes, but subsequently was restored to the retired list by the Secretary of War, ceased to be an officer of the Army, by force and effect of section 2 of the act of March 30, 1868 (15 Stat. 58), when he accepted the appointment and assumed the duties of secretary of legation. 19 Op. 609.

107. **Same—Attempted restoration.**—Neither the act of March 3, 1875 (18 Stat. 512), section 2, nor the action of the Secretary of War above referred to, operated to reinstate him as such officer, and his name is not lawfully borne on the retired list of the Army. *Ib.*

108. **Same.**—The act of March 30, 1868, applied to officers on the retired as well as on the active list, and it made the acceptance of the diplomatic officer vacate the military office *eo instanti*; the vacancy thus created necessarily continuing until filled in the usual way. *Ib.*

109. **Same.**—The act of March 3, 1875, should be construed to have a prospective effect only. *Ib.*

110. **Retirement.—The claim of Gen. Schuyler Hamilton** to be placed on the retired list of the Army, based on his appointment to the staff of Brevet Lieutenant-General Scott, as a military secretary, is inadmissible under the laws in force; he not now being an officer on the active list by virtue of that appointment. 14 Op. 506.

111. **Same.** Opinion of November 28, 1874 (14 Op. 506), upon the claim of Gen. Schuyler Hamilton to be borne on the retired list of the Army, reaffirmed. 17 Op. 9.

112. **Retired army officer—Acceptance of a diplomatic or consular appointment.**—The solu-

tion of the question whether an officer on the retired list of the Army can accept a diplomatic or consular appointment and still hold his position on the retired list with rank and pay is a matter of his private concern only, and not a subject with which the United States can be concerned until some action has been taken by such officer. 21 Op. 510.

113. **Retired army officers—Advancement—Rank and pay.**—An officer of the Army retired under the provisions of the act of October 1, 1890 (26 Stat. 562), for physical disabilities contracted in the line of duty and placed on the retired list of the Army with the rank and retired pay of one grade above that actually held by him at the time of retirement, is not entitled to an additional advancement under the provisions of the army appropriation act of April 23, 1904 (33 Stat. 264). 25 Op. 158.

114. **Advancement—Retirement—Rank.**—The act of October 1, 1890 (26 Stat. 562), does not authorize the advancement of an officer, found physically disqualified, to the next higher grade, when his right to such advancement has accrued, and, having been so advanced, to be retired with the rank of such higher grade. 25 Op. 514.

Opinion of March 26, 1904 (25 Op. 158), adhered to. *Ib.*

115. **Retired army officer—Advancement—Public office.**—Officers of the Army on the retired list hold public office; but an advancement of such an officer, as authorized by the act of April 23, 1904 (33 Stat. 264), does not create an office and is not accomplished by an exercise of the appointing power. 25 Op. 185.

116. **Same—Rank and pay.**—The Attorney-General declines to express an opinion upon the question whether a retired officer advanced in rank and pay by the Executive under the act of April 23, 1904, may be paid at the advanced rate before the Senate has consented to the advancement, as that question has been decided by the Comptroller of the Treasury, whose decision, under section 8 of the act of July 31, 1894 (28 Stat. 208), is conclusive in law. *Ib.*

117. **Number to be retired each year—How computed.**—In determining whether the limit of 400, prescribed by section 7 of the act of June 18, 1878 (20 Stat. 150), as the number of army officers to be retired each year, has been reached or not, the number retired



under the act of June 30, 1882 (22 Stat. 117, 118), must always enter into the computation. 17 Op. 421.

**118. Same.**—No retirement can lawfully be made under the laws existing prior to the act of June 30, 1882, when the number already on the retired list amounts to 400; although, by retirements *under that act*, the list is subject to temporary augmentation beyond the limit of 400. *Ib.*

**RETIRED LIST.** For details from, for colleges, *see* ARMY II, b, 86-90.

**PAY, ETC.** *See* ARMY II, d, 2.

**119. Honorable muster out—Right to title.**—Persons who served during the rebellion in the Army of the United States as officers in the volunteer service and have been honorably mustered out of such service, are entitled to bear the official title, and, upon occasions of ceremony, to wear the uniform of the highest grade they have held in the volunteer service. 21 Op. 579.

**120. Commission in Volunteer Army not vacated because officer holds civil office.**—The commission of the attorney-general of the State of South Dakota as an officer in the Volunteer Army is not vacated by reason of section 1222, Revised Statutes. 22 Op. 88.

**121. Same.**—The provision of section 1222 that no officer of the Army on the active list shall hold any civil office, etc., applies only to officers of the Regular Army. *Ib.*

**122. Dismissal.—Power of the President** under section 17 of the act of July 15, 1870 (16 Stat. 319), to drop an officer from the rolls of the Army, considered. 17 Op. 13.

**123. Same.**—Neither the act of March 3, 1865 (13 Stat. 487), nor that of July 13, 1866 (14 Stat. 90), applies to cases expressly and specifically provided for by section 17 of the act of July 15, 1870 (16 Stat. 319). *Ib.*

**124. Summary dismissal—Revocation of order—Subsequent service—Retirement—Ineligible.**—Where, after summary dismissal of an officer from the service, the order of dismissal was revoked, and (the vacancy not having been filled in the meantime) the officer returned to the position from which he was dismissed and continued to serve therein for over one year, when he was retired under the provisions of the act of August 3, 1861: *Advised* that the dismissal created a vacancy which could not otherwise be filled than by

an appointment with the advice and consent of the Senate; that the subsequent revocation of that order was ineffectual to restore the officer to his former position in the Army; that when, afterwards, he was put on the retired list he was not a commissioned officer of the Army, and was therefore ineligible to a place thereon; and that, accordingly, he is not entitled to be borne on such list. 19 Op. 203.

**125. Indirect dismissal.**—Where A, an officer in the military service of the United States, was dismissed pursuant to the sentence of a general court-martial, which court, as it afterwards appeared, had no jurisdiction over the officer, and B was nominated to take his place on a certain date, "vice A, dismissed," which nomination was confirmed by the Senate, the appointment of B operated to supersede A, who ceased to be an officer after the date on which that appointment took effect. 24 Op. 89.

**126. Discharge.**—A discharge of an officer from the military service, under section 3 of the act of July 15, 1870 (16 Stat. 317), in order to be valid, must, like a resignation, be founded on an offer on the one part and an acceptance on the other. 18 Op. 311.

**127. Same—Offer rejected and later acted upon is invalid.**—Accordingly, where an assistant surgeon, in September, 1870, offered to take the benefit of that act, and in November following his offer was virtually rejected, an order subsequently (in December, 1870) issued discharging him from service is held to be invalid and his status in the service unaffected thereby. *Ib.*

**128. Dropped—Revocation of the order, after another has been appointed to the vacancy, ineffectual.**—Where a captain in the Fourth Infantry was with the advice and consent of the Senate appointed major in the Seventh Infantry, *vice* L dropped, and afterwards the President revoked the order dropping L and directed that he be restored to his former commission to fill a vacancy of major in the Eighteenth Infantry, to date from July 28, 1866, and at the same time, by direction of the President, L was placed on the retired list as major: *Advised* that the revocation by the President of his order dropping L was ineffectual to restore him to the Army and place him on the retired list, and that he is not entitled to be borne thereon. 19 Op. 202.

d. *Rank and Pay, etc.*

## 1. Rank.

**129.** Section 11 of the act of March 2, 1899 (30 Stat. 979), takes from the four principal assistants of the Quartermaster-General the rank of colonel, and the increased rank of the quartermaster on the staff of the Commanding General of the Army, given them by the act of July 7, 1898 (30 Stat. 715). 22 Op. 381.

**130.** The rank of an officer constructively mustered into the service of the United States under the provisions of the act of February 24, 1897 (29 Stat. 593) does not fluctuate with the changed conditions of his command. He is such an officer *de facto* and *de jure*, without limitation of time or condition, and is to be recognized as such until he is promoted, dies, or is disposed of in some other manner provided by law. 23 Op. 331.

**131. Rank.—Previous to the Act of March 2, 1867** (14 Stat. 434) rank in any grade in the Army was determined by date of commission or appointment; and where commissions were of the same date, then, as between officers of the same regiment or corps, by the order of appointment. 17 Op. 362.

**132. Same.—That act** (sec. 1219 Rev. Stat.) introduced a new rule, cumulative in its character, for determining relative rank as between officers "having the same grade and date of appointment and commission," which, as regards officers of the same regiment or corps, operates only where such officers, being of the same grade and date of appointment and commission, have (one or more) "actually served, whether continuously or at different periods, as a commissioned officer of the United States," etc. Where none of them, when appointed, had thus actually served, the former rule (i. e., order of appointment) would still be applicable in fixing their relative rank in the corps. *Ib.*

**133. Relative rank where the same rank was attained on the same day.**—Opinion of May 18, 1882 (17 Op. 362), viz, that where certain assistant surgeons had attained the rank of captain on the same day, but whose appointments and commissions were not of the same date, their relative rank as between themselves was not determined by the provisions of section 1 of the act of March 2, 1867, 14 Stat. 434 (sec. 1219, Rev. Stat.), but by the

date and order of their appointment; reaffirmed. 17 Op. 402.

**134. Same.—Combined volunteer and regular service.**—Under section 17 of the act of July 28, 1866 (14 Stat. 334), an assistant surgeon who served as such less than three years in the Regular Army, or less than three years in the volunteer forces, did not become immediately entitled to the rank of captain, although his volunteer and regular service, when combined, may have amounted to three years. *Ib.*

**135. Same.**—But by the second section of the act of March 2, 1867 (14 Stat. 435), the officer would have a right to have his volunteer service computed, and if at the date of that act this service, united with his service in the Regular Army, made three years, he would then be entitled to the rank of captain. This provision, however, did not operate retrospectively, so as to affect or alter the previous relations of the officer in the service. *Ib.*

**136. In fixing the relative rank of officers of the same grade and date of commission,** under the act of March 2, 1867 (14 Stat. 434; sec. 1219, Rev. Stat.), constructive service as a commissioned officer is not to be considered. 17 Op. 52.

**137. Same.**—The terms of the statute, "actually served," are used *ex industria*, and are intended to prevent any service purely constructive in its character from affecting the relation between officers of the same date. *Ib.*

**138. Relative rank in the Paymaster's Department of the Army,** as between officers having the same grade and date of appointment and commission, was regulated by the act of March 2, 1867 (14 Stat. 434; secs. 1219 and 1292, Rev. Stat.), and was determined by length of service as a commissioned officer, computed according to the provisions of that act. 17 Op. 10, 12.

**139. Same.**—Except as between such officers as have the same date of appointment and commission, the matter of relative rank was left by that act to be governed by the dates of the commissions under which the officers are at the time serving. *Ib.*

**140. Relative rank.**—Y, B, and S were second lieutenants in different infantry regiments, ranking in the order named, according to dates of their respective appointments and commissions. They were all promoted

to be first lieutenants in their respective regiments as of the same date, June 23, 1878. S, who was the junior second lieutenant, claimed to be the senior first lieutenant under section 1219, Revised Statutes, because of the greater length of service as a commissioned officer prior to date of promotion: *Held* that the rule prescribed by that section for determining relative rank as between officers of the same grade and date of appointment and commission applies to appointments on promotion as well as to original appointments; and, consequently, that S ranked the other first lieutenants referred to. 17 Op. 34.

141. *Same.*—Promotion is a mode of appointment, and it is not less an appointment because the person promoted has previously held another appointment in the service. *Ib.* (But see 17 Op. 196.)

142. The relative rank of officers in the military service of the United States, under section 1219, Revised Statutes, must be determined by reference to the time of muster in, and not from the time of enrollment. 23 Op. 406. (Modifying 23 Op. 232.)

143. *Same.*—Legislation supplementary to section 1219, Revised Statutes, being the acts of May 26, 1898 (30 Stat. 420), July 7, 1898 (30 Stat. 721), and March 3, 1899 (30 Stat. 1065), did not impliedly amend that section, nor change the military system of the United States. *Ib.*

144. *Same*—Reimbursement.—This supplemental legislation was in the nature of a recognition of an equitable claim to reimbursement for services which were rendered after enlistment and before muster in or acceptance of their commissions, and has reference only to volunteers under the act of April 22, 1898 (30 Stat. 361). *Ib.*

145. In fixing relative rank between officers of the same grade, section 1219, Revised Statutes, does not in terms require that the officer shall be a commissioned officer, but only that he has "served as a commissioned officer." 23 Op. 232.

146. Service without formal commission.—An officer of the Army may be such and be in the service of the United States without any formal commission from the President, and his grade and rank are those of a commissioned officer. *Ib.*

147. *Same.*—The service of officers of the United States Army who were formerly officers

of State volunteer organizations called into the service of the United States under the act of April 22, 1898 (30 Stat. 361), began on the day of their enrollment and joining for service. *Ib.*

148. *Same.*—The service of officers of the ten volunteer regiments organized under section 1 of the act of May 11, 1898 (30 Stat. 405), began at the time each organized company reported at rendezvous for service and such officers personally appeared for duty. *Ib.*

149. Relative rank—Promotions.—The mere promotion of two officers in different departments of the Army does not, under sections 1603 and 1219, Revised Statutes, disturb their preexisting relative rank. 24 Op. 74.

150. *Same.*—Section 1219, Revised Statutes, does not purport to regulate merely the relative rank of officers in the same department of the Army, but is intended to fix the relative rank of the various officers of different departments of the Army. *Ib.*

151. *Same.*—There is no warrant, therefore, for holding that promotions are appointments where the officers promoted are in different departments of the Marine Corps, but are not appointments where they are in the same department. *Ib.*

152. Brevet rank—Precedence and command.—Where an army officer is placed on duty according to his brevet rank by special assignment of the President, he is, while thus assigned, entitled to precedence and command according to his brevet commission, even over an officer holding a full commission of the same rank as the brevet, but of junior date. Thus a colonel who holds a brevet commission as major-general of the date of March 2, 1867, and who is by the President specially assigned to duty according to his brevet rank, takes precedence over an officer who holds a full commission of major-general dated November 25, 1872. 17 Op. 39.

BREVETS. See also ARMY, II, a—Judge-Advocate.

## 2. Pay—Pay Accounts.

153. Longevity pay.—In computing the longevity pay of officers of the Army, under the provision in the act of February 24, 1881 (21 Stat. 346), declaring that "the actual time of service in the Army or Navy, or both, shall be allowed all officers, etc.:" *Held* that the actual time of an officer's service as a

cadet at the Military Academy should not be allowed; that where the officer served as an assistant civil engineer in the employ of the War Department on the Florida coast and elsewhere, the actual time of his service in that capacity should not be allowed. 17 Op. 93. (But see *U. S. v. Morton*, 112 U. S. 1.)

**154. Longevity pay—Reopening of settlement.**—Where a former cadet at the Military Academy who served as such from July 1, 1865, to June 15, 1869, was appointed a second lieutenant, and has ever since served as a commissioned officer in the Army, presented a claim in February, 1884, for increased longevity pay under any law allowing credit for cadet service, and by settlements made in April, 1885, was allowed an increase commencing from February 24, 1881, on a construction of law since declared by the Supreme Court, in the case of *United States v. Watson* (130 U. S. 80), to be erroneous, after which decision he filed a claim for longevity pay due under said decision: *Held* that the settlements made in April, 1885, can not be reopened upon the ground that they proceeded on a mistaken view of the legislation governing the subject involved. 19 Op. 439.

**155. Pay of contract surgeon.**—As a general rule, a contract surgeon is entitled to pay only from the time he enters upon duty under his contract. 17 Op. 461.

**156. Same.**—The maximum fixed by paragraph 1305 of the Regulations of 1863, for the compensation of contract surgeons continued up to February 17, 1881, but thereafter compensation at a rate exceeding such maximum was allowable. *Ib.*

**157. Pay of chaplain—Amount drawn prior to date of acceptance.**—The amount drawn by Charles M. Blake for pay as chaplain in the Army from May 14, 1878, to the date of his acceptance of appointment as post chaplain, with advice and consent of the Senate (May 23, 1881), may be charged against him and withheld from his pay thereafter accruing. 17 Op. 152.

**158. Same.**—*Seem*, however, that he may be allowed the benefit of his actual service from June 21, 1878, to March 4, 1879, for longevity. *Ib.*

**159. Additional pay.**—An officer in the Ordnance Department who, in addition to his regular duties as ordnance storekeeper, acted as assistant commissary at the Watervliet Arsenal

by virtue of post orders, is entitled under section 1261, Revised Statutes, to receive \$100 per year in addition to the pay of his rank during the time he performed services as assistant commissary. 17 Op. 43.

**160. Retired army officers' promotion—Pay.**—Officers of the Army, retired under the act of April 23, 1904 (33 Stat. 264), who were duly nominated for promotion by the President for this purpose, and confirmed by the Senate on December 16, 1904, "to date from April 23, 1904," are entitled, respectively, to the pay of the higher grade to which they have been promoted, from the date of the act, viz, April 23, 1904. 25 Op. 299.

**161. Same.**—The general rule is that laws speak from the date of their enactment, and where something remains to be done, not inconsistent with a relation back when it is done, the general rule may be applied. *Ib.*

**162. Retired army officer, Advanced in rank and pay under act of April 23, 1904—Payment before confirmation by Senate.**—The Attorney-General declines to express an opinion upon the question whether a retired officer advanced in rank and pay by the Executive under the act of April 23, 1904, may be paid at the advanced rate before the Senate has consented to the advancement, as that question has been decided by the Comptroller of the Treasury, whose decision, under section 8 of the act of July 31, 1894 (28 Stat. 208), is conclusive in law. 25 Op. 185.

**163. Retired army officer—Congressman.**—The question whether a Congressman can receive pay as a retired army officer is one of grave doubt, which only the determination of the Supreme Court can satisfactorily settle. 20 Op. 686.

**164. Pay and allowances of officers serving with troops.**—The phrase "troops operating against an enemy," as used in section 7 of the act of April 26, 1898 (30 Stat. 365), was intended to apply to all instances where the troops of the United States are assembled into separate bodies, such as regiments, brigades, divisions, or corps, for the purpose of carrying on and bringing to a conclusion the war with Spain. 22 Op. 95.

**165. Same.**—If the operations of the troops are with the direct object of assisting in the military measures of the Government for subduing the forces of Spain, they can, within the reasonable intendment of this act, be consid-

ered as operating against an enemy, although such operations may not be direct and are in the nature of necessary component steps, though remote, in one great military objective. *Ib.*

166. **Same.**—Any troops assembled at camps in the United States for the present war purposes can properly be considered as operating against an enemy, although their present service is confined to the ordinary routine of camp life. *Ib.*

167. **Officers exercising**, under assignment in orders, a command above that pertaining to their grade, in connection with the Army of the United States, if performing no other service of a domestic nature, but held in readiness to resume hostilities, are entitled to the increased pay and allowance provided for by the act of April 26, 1898 (30 Stat. 365). 22 Op. 258.

168. **Overpayment—Against whom chargeable.**—Where an officer's account for the same month was paid twice by different paymasters—one payment being made in November and the other in December: *Held* that the paymaster who made the last payment is chargeable with the overpayment. 17 Op. 425.

169. **Same.**—In such case the Government may hold liable for the overpayment both the officer who made and the officer who received the payment. *Ib.*

170. **Same.**—As between two conflicting claims to a credit for a disbursement made on the same day, which might then have been lawfully made by either one of the claimants, but not by both, regard may be had to the actual time of day when the payment by each was made in order to determine which had priority. *Ib.*

171. **Same—Where Government recovers part of overpayment.**—When the amount of overpayments to an officer are charged to the paymasters making them and the Government afterwards recovers a part of the loss sustained by such overpayments, the balance of the loss should be apportioned to all of these paymasters *pro rata*. *Ib.*

172. **Overpayment.**—Opinion of July 27, 1882 (17 Op. 425), on certain questions concerning paymasters' accounts, reconsidered. 17 Op. 603.

173. **Same—No knowledge of former payment.**—A pay account of Lieutenant M, for the month of August, 1877 (he being on duty within the limits of the New York pay dis-

trict), was paid by the chief paymaster at New York, and soon afterwards a second pay account of Lieutenant M for the same month was paid by another paymaster there, who had no knowledge of the previous payment, nor was it practicable for him to obtain such knowledge: *Held* that the last-mentioned paymaster is not chargeable with the amount so paid by him, but that, by virtue of the Army Regulations (paragraph 1006, Regulations of 1863; paragraph 1652, Regulations of 1881) he is entitled to have the same passed to his credit. *Ib.*

174. **Same—When officer was not serving in the pay district.**—A third account of Lieutenant M for the same month was paid to an assignee by a paymaster at Charleston, S. C., the latter knowing that Lieutenant M was not then serving within the Charleston pay district. Viewing this case in connection with paragraph 1348, Regulations of 1863, and certain circulars from the Paymaster-General's Office mentioned: *Held* that the payment of this account was wholly unauthorized, and that the paymaster is properly chargeable therewith. *Ib.*

175. **Overpayment—As Major-General of volunteers after appointment as colonel in United States Infantry.**—Where, in 1866, a major-general of volunteers was appointed colonel of United States Infantry and he accepted and served as such until August, 1867, when he was mustered out of service as a major-general of volunteers, during which time he continued to draw the pay of a major-general: *Held* that the Government can not now set against his allowance for percentage increase so much of said pay received by him as major-general as represents the excess of what he should have received as colonel. The settlements of the accounting officers in this matter are conclusive upon the executive department of the Government. 17 Op. 448.

176. **Overpayment.**—Where an officer who was on leave of absence was by a new order placed "on a status of waiting orders" and drew full pay therefor for a period when he was only entitled to half-pay: *Held* that the difference between full pay and half pay thus erroneously paid him can not be withheld in the adjustment of another and subsequent pay account. 18 Op. 158.

177. **Same.**—The case of Lieut. S. C. Robinson (18 Op. 158), reconsidered in the light

of new and material facts; and it appearing that there has been no such settlement of his account as was heretofore supposed: *Held* that he is bound to refund the sum which has been paid him without authority of law. 18 Op. 229.

**178. Pay accounts of officers—Assignment.**—Where an army officer assigned his pay accounts in payment of certain indebtedness, which accounts the Paymaster-General declined to pay for the reason that on the maturity thereof the officer was in arrears to the United States: *Held* that the refusal of the Paymaster-General was in accordance with section 1766, Revised Statutes. 17 Op. 30.

**179. Same.**—The statute does not require that, before payment is withheld, the officer shall be adjudged in arrears in a suit brought against him. *Ib.*

### 3. Commutation for quarters— Mileage, etc.

**180. Commutation for quarters during leave.**—An officer in the enjoyment of quarters in kind at the commencement of leave (cumulative) taken under the act of July 29, 1876 (19 Stat. 102), does not become entitled to commutation upon the commencement of the leave. 17 Op. 41.

**181. Same.**—Nor does he become entitled to commutation if, during such leave, he voluntarily abandons the use of the quarters in kind; nor if he vacates his quarters in kind at the command of his superior; nor if there are unoccupied quarters at the post or station that might properly have been assigned to him had no leave been granted. *Ib.*

**182. An officer of the Army placed on waiting orders is not entitled to commutation for quarters under the proviso in section 9 of the act of June 18, 1878 (20 Stat. 151).** 17 Op. 169.

**183. Same.**—The word "places," as used in that proviso, comprehends only military posts and stations. *Ib.*

**184. Contract surgeon—Rank of first lieutenant.**—B was in the military service as a surgeon, under contract dated January 1, 1881, and on duty at the Washington Arsenal, District of Columbia, from January 1 to April 30, 1881: *Held* that he was entitled, for that period, to the commutation for quarters allowed by law to an assistant

surgeon of the rank of first lieutenant, if no public quarters were available for his accommodation. 17 Op. 461.

**185. Traveling allowances,** as authorized by paragraph 2280, Regulations of 1881, can be lawfully paid a contract surgeon where they constitute part of the contract. 17 Op. 461.

**186. Mileage and commutation of quarters.**—Under the income-tax law of August 27, 1894 (28 Stat. 553), mileage and commutation of quarters paid to officers of the United States Army are to be considered as parts of the incomes of such officers, and are to be added to other income in order to ascertain the total income. 21 Op. 112.

**187. Allowance for forage—Retired army officer.**—Under the joint resolution of April 12, 1870 (16 Stat. 663), granting to Gen. Gabriel R. Paul (retired) "the full pay and allowance of a brigadier-general in the Army of the United States," that officer is not entitled to an allowance of forage. 17 Op. 390.

**188. Same.**—The clear intent of all the acts upon the subject of forage is to provide food for horses belonging to officers engaged in active duty in the field or at military posts. *Ib.*

ARTIFICIAL LIMBS. *See* ARTIFICIAL LIMBS.

### e. Civil Office or Employment.

**189. Position on a board created by a city ordinance.**—Where an officer of the Army was tendered a place on a "board of experts," created by a city ordinance to determine the most durable and best pavement for the streets of the city: *Advised* that, in view of the provisions of section 1222, Revised Statutes, which forbids officers of the Army accepting civil office, the place be not accepted by the officer. 18 Op. 11.

**190. The detail of an officer of the Army to report to the President of the World's Columbian Commission, with a view to his assignment by the latter to the duties of an engineer in the preparation and construction of buildings, grounds, etc., for the Columbian Exposition, is within the prohibition of section 1224, Revised Statutes, provided the performance of such duties requires the officer to be separated from his company, regiment, or corps, or interferes with the discharge of his military duties.** 19 Op. 600.

191. **Same.**—Where a leave of absence is asked by an army officer, for the very purpose of enabling him to undertake the employments prohibited by said section, the granting of such leave would be an evasion of the statute and be unwarranted. *Ib.*

*See also* ARMY, 103–106, 112, 120, 121, 163.

f. *Civil Service.*

192. An army officer detailed for duty in a clerical position can not be considered as a member of the “classified service,” and after separation therefrom can not be reinstated therein under Rule IX by reason of his service during the war. 22 Op. 672.

*See also* II, c, 106.

III. Volunteer Army—Militia.

193. The service of officers of the United States Army who were formerly officers of State volunteer organizations called into the service of the United States under the act of April 22, 1898 (30 Stat. 361), began on the day of their enrollment and joining for service. 23 Op. 232.

194. **Service.**—The ten volunteer regiments.—The service of officers of the ten volunteer regiments organized under section 1 of the act of May 11, 1898 (30 Stat. 405), began at the time each organized company reported at rendezvous for service and such officers personally appeared for duty. *Ib.*

195. **Same.**—The relative rank of officers in the military service of the United States, under section 1219, Revised Statutes, must be determined by reference to the time of muster-in, and not from the time of enrollment. 23 Op. 406.

196. **Same.**—The acts of May 26, 1898 (30 Stat. 420), July 7, 1898 (30 Stat. 721), and March 3, 1899 (30 Stat. 1065), did not impliedly amend that section nor change the military system of the United States. *Ib.*

197. **Same.**—This supplemental legislation was in the nature of a recognition of an equitable claim to reimbursement for services which were rendered after enlistment and before muster-in or acceptance of their commissions, and has reference only to volunteers under the act of April 22, 1898 (30 Stat. 361). *Ib.*

198. **Same.**—Opinion of September 22, 1900 (23 Op. 232), modified, holding that the officers of the volunteer or immune regiments

referred to in the above-named acts were, in the interval between the enrollment and muster-in or acceptance of their commissions, in the United States service within the meaning of section 1219, Revised Statutes. *Ib.* (412).

199. **Induction of State militia into the military service of the United States.**—Certain members of the Sixth Massachusetts Militia which was called into the service of the United States by proclamation of the President of April 15, 1861, who failed to reach Washington, the place of rendezvous, were never inducted into the actual military service of the United States under that call, a formal muster-in being necessary. 24 Op. 651.

200. **Same — Constructive service.**—The question as to whether a constructive muster-in of militia might not have in some instances the same effect as a formal muster-in of militia under a call by the President, not considered. *Ib.*

201. **Discharge.**—The Fifty-eighth Pennsylvania Regiment of Militia was not in the military service of the United States in such sense as to entitle an officer of that regiment to a certificate of discharge from the United States. 21 Op. 130.

202. **Retirement—Age limit.**—An officer of the Regular Army, holding at the same time a commission as a general in the Volunteer Army under section 11 of the act of April 22, 1898 (30 Stat. 363), may continue to hold and exercise his commission in the Volunteer Army after having been placed upon the retired list by reason of the age limit. 22 Op. 176.

203. **Same.**—The law fixes no age limit for officers in the Volunteer Army. *Ib.*

204. **Same.**—The act of June 20, 1882 (22 Stat. 117), relative to retirement, applies to an officer of the Regular Army who is 64 years of age, temporarily serving under a volunteer commission, without affecting his status in the volunteer service, but does not apply to a volunteer officer, not being in the Regular Army, who is 64 years of age. 22 Op. 199.

205. **Same.**—The volunteer service contemplated by the above and similar acts was clearly the volunteer service of the civil war, and can not be held to be prospective and to have anticipated a new volunteer service. *Ib.*

Opinion of August 3, 1899 (22 Op. 176), reaffirmed. *Ib.*

206. The act of April 22, 1898 (30 Stat. 361), providing for temporarily increasing the mili-

tary establishment of the United States in time of war, makes no provision for the appointment of regimental officers where regiments are made up by companies, troops, or battalions furnished by two or more different States. 22 Op. 135.

207. **Same.**—Regimental officers of such regiments as may be formed by contributions of companies from two or more States are to be appointed by the President of the United States, under the constitutional provisions which make him the Commander in Chief of the Army and Navy and which authorize him to appoint all officers of the United States whose appointment is not otherwise provided for by law. *Ib.*

208. **Appointment of officers.**—Where less than a majority of the members of a State militia organization enlist in the Volunteer Army of the United States under the act of April 22, 1898 (30 Stat. 361), they can not be said to have enlisted "in a body," and the provision of the act as to the appointment of officers by governors does not apply. 22 Op. 146.

209. **Same.**—The term "officers" in the provisions of the above-named statute, authorizing the appointment in certain cases of militia officers to corresponding grades in volunteer organizations, applies to commissioned officers only. *Ib.*

210. **Same.**—Officers of militia organizations are entitled to appointments of corresponding grade in the Volunteer Army even though the former was raised and organized in consequence of and subsequent to the call of the President for volunteers. *Ib.*

211. **Same.**—Where a volunteer regiment is made up of separate companies or battalions contributed by two or more States, the governor of each State is entitled to appoint the officers of the companies or battalions by them respectively contributed, but the regimental officers would be appointed by the President. The same would apply to battalions similarly constituted. *Ib.*

212. **Same.**—Number and rank of officers.—In all cases where appointments to such organizations are to be made by the President, the same law as to number and rank of officers applies that applies to regiments of the Army. *Ib.*

213. **Vacancies — Appointment.**—Vacancies of regimental and company officers occurring in organizations from the several States and

Territories after their muster into the Volunteer Army of the United States, under the act of April 22, 1898 (30 Stat. 361), should be filled by commissions issued by the governors of the States or Territories to which the organizations belong. 22 Op. 109.

214. **Removal.**—When an organization of State militia, with regimental and company officers bearing commissions from the governor of the State in which organized, is received as a body into the service of the United States under the provisions of section 6 of the act of April 22, 1898 (30 Stat. 362), the officers so commissioned and recognized by the military authorities of the United States remain in their several grades until vacancies contemplated by the law occur, and can not be removed at will by such governor. 22 Op. 225.

215. **Officers — Grade.**—Organizations of State militia, received as a body into the service of the United States as a part of the Volunteer Army under the act of April 22, 1898 (30 Stat. 361), are to be maintained as received, and the officers of the same are entitled to enter the service with the grades which their commissions severally indicate. 22 Op. 536.

216. **Displacement of officer by governor.**—Although such troops retain their distinctive features as State organizations, the governor of the State from which they came can not subsequently displace an officer holding his commission at the time the organization entered the service of the United States, but he may fill any vacancy occurring in it. *Ib.*

217. A regiment so entering the military service of the United States has the right to maintain its organization with the number and grade of officers authorized by the laws of the State from which it came. *Ib.*

218. **Vacancy—Muster in.**—An officer commissioned by the governor of a State to fill a vacancy as major occurring in such regiment in the field need not be mustered again into the service of the United States, he having been originally mustered into the service with the regiment as a captain. *Ib.*

219. The commission of the attorney-general of the State of South Dakota as an officer in the Volunteer Army is not vacated by reason of a violation of section 1222, Revised Statutes, relating to the holding of civil office. This section applies to officers of the Regular Army only. 22 Op. 88.



**220. Distribution of arms.**—Provisions of section 1661, Revised Statutes, and of the act of February 12, 1887 (24 Stat. 401), touching the distribution of arms to the militia of the several States and Territories, considered. 19 Op. 61.

**221. Same.**—Where a State or Territory had an unexpended balance to its credit, under the old law, on June 30, 1887, which still remains available, such balance can be drawn upon to supply ordnance stores to it. *Ib.*

**222. Same.**—But where the quota belonging to any State or Territory, under the old law, has been overdrawn, the amount overdrawn is not to be charged to such State or Territory under the new law. *Ib.*

**223.** The ordnance and other stores belonging to the several States, taken or accepted by the Government for use in the war with Spain, should not be returned in kind, but should be paid for at the price agreed upon, or, in the absence of an agreement, what they were worth. 22 Op. 372.

**224. Honorably discharged.—Title—Uniform.**—Persons who served during the rebellion in the Army of the United States as officers in the volunteer service and have been honorably mustered out of such service, are entitled to bear the official title, and upon occasions of ceremony to wear the uniform of the highest grade they have held in the volunteer service. 21 Op. 579.

**225.** The last proviso of section 6 of the act of April 22, 1898 (30 Stat. 362), authorizing the organization of certain forces with special qualifications from the nation at large, contemplates such an organization of 3,000 men for the entire Army, and not the organization of such force under each call for volunteers. 22 Op. 161.

*See also UNITED STATES, 58.*

#### IV. SIGNAL CORPS.

**226. Part of Army only in limited sense.**—Officers and enlisted men of the Signal Corps (other than the Chief Signal Officer and officers detailed from the Army) are a part of the Army only in this sense, namely, that in general they are liable to such duties and entitled to such privileges, appertaining to the Army, as can be performed and enjoyed without severance from the Signal Service. 17 Op. 146.

**227. Same.**—They belong to a special service in the Army, and are subject to military government; but they are not by law transferable to ordinary military duty, and are organically separate and distinct from the Army proper. *Ib.*

**228. Extra-duty pay—No appropriation.**—In the matter of the claims of Sergeant Robinson and Corporal Speddin, of the Signal Corps, for extra-duty pay for services performed by them from July 1, 1883, to December 20, 1884, it appearing that Congress has made no provision for extra-duty pay to signal service men in either of the appropriation acts of March 3, 1883 (22 Stat. 603), and July 7, 1884 (23 Stat. 194), for the fiscal years ending June 30, 1884, and June 30, 1885, respectively, or in any other appropriation act for the same fiscal years: *Held* that the claimants have no right to such pay for the period covered by their claims, unless the right is elsewhere conferred by statute, which does not appear. 18 Op. 201.

**229. Same.**—The claimants being non-commissioned officers, and not employed on extra duty as overseers, their claims are not within section 1287, Revised Statutes. *Ib.*

#### V. Engineer Corps.

**230. Promotion.—Officer who failed in examination not qualified because of continuous service.**—An officer of the Engineer Corps who has unsuccessfully undergone examination for promotion under section 1206, Revised Statutes, and in consequence has been suspended from promotion for one year as provided by that section, is not, during the period of such suspension, qualified for promotion on account of continuous service under section 1207, Revised Statutes. 17 Op. 571.

**231. The Chief of Engineers of the Army** is not and never has been vested with authority to grant licenses for the erection of wharves along the river front of the city of Washington, D. C. 18 Op. 441.

#### VI. Summary Courts.

**232. Power of reviewing officer.**—The act of October 1, 1890 (26 Stat. 648), to promote the administration of justice in the Army,

does not give the reviewing officer power to mitigate or approve a part and disapprove a part of a sentence of a summary court, where the sentence was within the power of the court-martial to impose. 20 Op. 346.

*See also COURTS-MARTIAL.*

#### VII. Military Commission.

**233. Jurisdiction.**—A military commission has no authority, since peace has been declared in the Philippines, to try a former officer for an offense committed against a native of those islands during the insurrection. 24 Op. 570.

#### VIII. Army Regulations.

**234. New code of Army Regulations—Modification of.**—Section 37 of the act of July 28, 1866 (14 Stat. 337), directing a new code of regulations for the Army to be prepared, if not already repealed by force of section 5596, Revised Statutes, was superseded by the act of March 1, 1875 (18 Stat. 337), which in effect conferred authority to modify existing Army Regulations as well as to create new ones. 17 Op. 461.

**235. Same.**—The codification of "The Regulations of the Army and General Orders," under section 2 of the act of June 23, 1879 (21 Stat. 34), which was approved and published February 17, 1881, superseded the body of Army Regulations promulgated in 1863. Hence paragraphs 1304, 1305, and 1306 of the latter regulations are not now in force. *Ib.*

**236. Par. 20, Army Regulations of 1863—Promotions made regimentally.**—The rule prescribed in paragraph 20, Army Regulations of 1863, by which "promotions to the rank of captain shall be made regimentally," is not in conflict with the provisions of section 1204, Revised Statutes, and remains in full force. 17 Op. 65.

**237. The regulations and legislation concerning the promotion of subaltern company officers, from the year 1801 to the present time, reviewed, and the practice thereunder stated.** *Ib.*

**238. General Orders, No. 79, November 26, 1892—Reexamination of successful candidates.**—A regulation can not be promulgated

requiring a successful candidate who holds such certificate of eligibility to undergo a second examination after a specified time, the proviso in section 3 of the act of July 30, 1892 (27 Stat. 336), relative to two examinations, being intended to give a nonsuccessful competitor an opportunity to retrieve himself by a reexamination. 22 Op. 54.

#### IX. Articles of War.

**239. Article 58—Homicide in Cuba by private in United States Army.**—Article 58 of the Articles of War, which provides that "in time of war, insurrection, or rebellion \* \* \* murder [inter alia] \* \* \* shall be punished by the sentence of a general court-martial, when committed by persons in the military service of the United States," does not apply to the present situation of affairs with regard to Cuba. Therefore a private of the Second U. S. Artillery who committed homicide in Cuba subsequent to the treaty of peace with Spain, the victim being a teamster in the military service, should not be tried by court-martial nor by a military commission. 23 Op. 120.

**240. Same.**—Article 59—Trial by Cuban courts.—Article 59 of the Articles of War does not require that such private be delivered to the Cuban courts, but it is, nevertheless, proper to permit such courts to try him. *Ib.*

**241. Article 59—Soldier violating city ordinance.**—A city ordinance is within the expression "laws of the land," as used in the fifty-ninth article of war, and a soldier violating such an ordinance and escaping to a military reservation should be delivered on demand to the civil authorities for trial. 21 Op. 88.

#### X. Examining Board.

**242. Findings not approved by President—Retirement.**—An examination of a lieutenant of the Army by an examining board to determine his fitness for promotion, by which it was found that he was incapacitated for active service on account of certain physical disabilities, which findings were approved by the proper military authorities, but not by the President, was not such an examination as is required by law for the retirement of an officer from active service. 21 Op. 385.

243. **Same.**—No officer can be retired from the Army before the report of any board, even if approved by the Secretary of War, except is it also approved by the President. *Ib.*

244. **Same.**—A board constituted as a board of examination for promotion can not be invested with power of a retiring board, which the law requires to be differently constituted. *Ib.*

#### XI. Army Board.

245. **To make examination of heavy ordnance.**—The appropriation made by the act of March 3, 1881 (21 Stat. 468), in the provision authorizing the creation of a board of army officers to make examinations of improvements of heavy ordnance and projectiles, is applicable to expenses necessarily incurred by the board in performing the duties devolved thereon, among which the actual and necessary expenses of its members for board and lodging and for traveling while so engaged may be fairly included. 17 Op. 252.

#### XII. Civil Authorities.

246. **Relative jurisdiction of civil and military courts in Philippine Islands.**—An officer in the Army of the United States who while operating in the Philippines during the insurrection in those islands, and while the government of military occupation was in force therein, committed an offense against a native of those islands, was amenable only to the laws of war and can not be tried by the civil courts of those islands or of the United States; and, having left the military service, he can not now be tried for the offense by a military court. 24 Op. 570.

ARMY CANTEEN. *See* ARMY, I, e, 33, 34.

ARMY POSTS. *See* ARMY, I, e.

ARMY TRANSPORTATION. *See* ARMY, II, a, 53.

ARMY TRANSPORTATION ORDERS. *See* UNITED STATES, IV, 52.

ARMY PAYMASTER. *See* ARMY, II, a, 50-52; II, d, 171-173.

ARTIFICIAL LIMBS. *See* ARTIFICIAL LIMBS.

CADETS. *See* MILITARY ACADEMY.

COURTS-MARTIAL. *See* COURTS-MARTIAL.

GENERAL SERVICE MESSENGERS. *See* ARMY, 26.

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OVERPAYMENT. *See* II, d, 167-177.

#### ARREARS.

OF PENSIONS, *see* PENSIONS I, b, 13.

#### ARREST.

1. **Chinese.**—The denial to Chinese who are unlawfully in the United States of the privilege of entering this country, and their refusal to leave pending their subsequent arrest by the United States marshal and a hearing thereafter under the Chinese exclusion act, is neither detention nor arrest. 22 Op. 51.

2. **Same.**—Detention by an officer is in effect an arrest, and a person under detention or arrest must be furnished subsistence at the expense of the Government making the arrest. *Ib.*

3. **The right of forest supervisors and rangers to arrest persons violating the laws or the rules and regulations for the protection of forest reservations being doubtful, it is suggested that relief must be had through Congressional action.** 22 Op. 512.

4. **The Board of Commissioners of the Soldiers' Home can not empower the governor of the Home to arrest, detain, and deliver over to the civil authorities non-military persons committing crimes less than capital within the limits of the Home, except in the cases where any person may make an arrest without warrant or precept.** 20 Op. 514.

5. **As adequate power resides in the Secretary of the Navy to cause the arrest of an officer for malappropriation of public funds, notwithstanding the fact that he has been arrested by the civil authorities for the same offense and discharged on bail, it is improper to cause his arrest by the civil officers in order to his trial for a naval court-martial.** 21 Op. 504.

*See also* NAVY, V, 170, 171.

#### ARTICLES OF WAR.

*See* ARMY, IX.

**ARTIFICIAL LIMBS.**

1. The appropriation of \$175,000 for artificial limbs, etc., made by the act of March 3, 1881 (21 Stat. 435, 447), should be expended under the direction of the War Department. 17 Op. 233.

2. Commutation for an artificial limb or apparatus is demandable under section 4787, Revised Statutes, as amended by the act of March 3, 1891 (26 Stat. 1103), every three years instead of five, and the money commutation for such limb or apparatus, under sections 4788 and 4790 Revised Statutes, is also demandable every three years, which periods run from the dates when each artificial limb was furnished, and not from June 17, 1870. 20 Op. 83.

**ASSAY.**

See CUSTOMS LAWS, III, a, 88, 89.

**ASSIGNMENT.**

OF CLAIMS AND MONEY DUE ON GOVERNMENT CONTRACTS. See CLAIMS, I, f.  
OF CONTRACTS. See CONTRACTS, III, a.

**ASSISTANT MICROSCOPIST.**

See DEPARTMENT OF AGRICULTURE, II, 6, 7.

**ASSISTANT POSTMASTERS.**

See POSTAL SERVICE, II, b.

**ASSISTANT SURGEONS.**

See NAVY, II, d, 86, 87; MARINE-HOSPITAL SERVICE, 1.

**ASSISTANT TREASURERS OF THE UNITED STATES.**

See TREASURY DEPARTMENT, II, c.

**ASSUMPSIT.**

See CUSTOMS LAWS, XI, 469, 470.

**ATHOS, STEAMSHIP.**

See SHIPPING, 27.

**ATTACHMENT.**

See CUSTOMS LAWS, XI, 472.

**ATTESTATION OF SENTENCE.**

See COURTS-MARTIAL, IV, 30.

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### I. Authority and Duties.

1. The Attorney-General will not exercise appellate jurisdiction over a decision of one of the Executive Departments upon mixed questions of law and fact. 22 Op. 342.

2. *Civil Service Commission—Decision of.*—It is not within the authority of the Attorney-General to reverse a decision of the Civil Service Commission, or to require it to issue a certificate of reinstatement to a former clerk claiming to have served with the civilian employees of the Quartermaster's Department during the civil war. 20 Op. 270.

3. *United States attorneys—Employment and pay.*—The authority of the Attorney-General or Department of Justice to employ and pay United States attorneys for services not covered by their salaries and fees is expressly recognized by Congress in section 3 of the act of June 30, 1874 (18 Stat. 109), and section 299 Revised Statutes, and in the annual appropriations made by Congress for that purpose. 20 Op. 49.

4. *Direction of district attorneys in prosecution and punishment of fraud upon the revenues.*—The Attorney-General has no proper authority and should refrain from interfering by directions to district attorneys in the matter of the prosecution and punishment of frauds upon the revenue. 20 Op. 715. Note.

5. *Disposition of pending litigation.*—Under the primary, broad, and general control by the Attorney-General of suits in which the United States is interested, he is authorized to make such disposition of pending litigation,

including the compromise of cases of forfeiture incurred under the revenue laws, as seems to him meet and proper. 22 Op. 491.

6. *Same.*—He may absolutely dismiss or discontinue suits in which the Government is interested; *a fortiori*, he may terminate the same upon terms, at any stage, by way of compromise or settlement. *Ib.*

7. *Same.*—The doubt as to the authority of the Attorney-General, expressed in opinion of February 10, 1894 (20 Op. 714), not concurred in. *Ib.*

8. *Surety companies—Capital stock—Liability.*—The Attorney-General is not authorized to fix a limit of the percentage of capital stock to liability beyond which a surety company may not go upon a single official bond, or prescribe rates which such company shall charge for such insurance. 22 Op. 421.

9. *Land patents—Suit to vacate or reform.*—The Attorney-General should not institute for the benefit of private parties a suit to vacate or reform a United States land patent unless there is reasonable ground to believe that it will be sustained by the court; or, except for a wrong "which private litigation could not remedy." 21 Op. 13.

10. *Emigrant.*—It is safer and better practice for the Attorney-General not to attempt to define the word "emigrant," but to consider each case on its particular merits. 20 Op. 371.

11. *Ownership of land at Great Falls, Md.*—Declines to investigate and report to Congress in regard to.—In response to a resolution of the Senate directing the Attorney-General to investigate and report to that body who are the owners of the land and water power at the Great Falls of the Potomac River: *Advised* that any information on the subject found in the records of the Department would be gladly furnished the Senate, but that beyond this, it was submitted, such investigation is not within the duties of the Attorney-General as prescribed by law. 17 Op. 324.

12. *Employment of special counsel to assist in a trial by court-martial.*—The Attorney-General may, at the request of the Secretary of the Navy, employ special counsel to assist the judge-advocate in a trial by court-martial, the compensation of such counsel (in the absence of other provision) to be paid from the appropriation for the contingent expenses of the Navy. 18 Op. 135.

13. **Same.**—Such counsel should be commissioned by the Attorney-General under section 366, Revised Statutes. *Ib.*

## II. Opinions.

### a. To Whom Given.

14. The Attorney-General is not authorized to give an official opinion except to the President or to the head of an Executive Department and with reference to matters in the direct or supervisory control of the head. 20 Op. 608.

15. **Same.**—Declines to give opinion to Commissioner of Patents.—Accordingly he ought not, at the present time, to answer the question as to whether in an inquiry instituted by the Commissioner of Patents under section 467, Revised Statutes, the Commissioner has the power to appoint a referee to take testimony and to report the testimony taken, with conclusions thereon, subject to revision by the Commissioner of Patents and afterwards by the Secretary of the Interior. 20 Op. 608.

16. The President's right to call for an opinion from the Attorney-General is not limited to questions of law.—Article II, section 2, clause 1, of the Constitution provides that he "may require the opinion of the principal officer of each of the Executive Departments upon any subject relating to the duties of their respective offices." 23 Op. 360.

17. **Secretary of the Treasury.**—An opinion of the Attorney-General upon any question arising in the administration of the Treasury Department can only be had at the instance of the Secretary. 18 Op. 59.

18. **Solicitor of the Treasury.**—Where a question has been submitted by the Secretary to the Solicitor of the Treasury for advice thereon, the latter is not entitled, by virtue of section 361, Revised Statutes, to call upon the Attorney-General for his views on such question. *Ib.*

19. **Same.**—The Solicitor should, in such case, return his advice directly to the Secretary, who may, if he choose, require an opinion from the Attorney-General upon the same question. *Ib.*

20. **House of Representatives.**—The Attorney-General is not authorized by law to give an official opinion to the House of Represen-

tatives in response to a resolution thereof. 18 Op. 87.

21. **Same.**—To an Executive Department for information of the House of Representatives.—The Attorney-General is without authority to render an opinion to the head of an Executive Department, in compliance with a resolution of the House of Representatives, for the information of the latter, and without reference to any question of law arising to the administration of that Department. 18 Op. 107.

22. **For use of Senate committee.**—The Attorney-General is not authorized to give an official opinion upon a Senate bill submitted to him by the head of a Department at the request of a Senator, where the matter involved no question of departmental administration, but was submitted in order that the opinion might be laid before the committee of the Senate in charge of the bill. 17 Op. 357.

### b. Question not Arising in the Administration of an Executive Department.

23. It is not the duty of the Attorney-General to give an opinion to the Secretary of the Treasury upon questions relating to the past action of the Board of Supervising Inspectors, which was had on a matter properly submitted to such board under the provisions of section 4491, Revised Statutes, and which is not reviewable by the Secretary. 18 Op. 77.

24. **Matter in which the Department has no administrative concern.**—It is not deemed proper for the Attorney-General to give an official opinion where the question submitted by the head of a Department relates to duties of Territorial officers in a matter touching which such Department has no administrative concern. 19 Op. 7.

25. The Attorney-General deems it improper to give an official opinion upon a question which does not arise out of any case actually existing in the administration of the Department seeking advice, notwithstanding such question may involve the construction of the immigration and contract labor laws (9 Op. 82, 355, 421; 10 Op. 50; 13 Op. 531, 568). 19 Op. 331.

26. The Attorney-General declines to give an opinion in advance, where no case actually existing is presented, as to what would in

future be held upon indefinite and varying facts. 19 Op. 414.

27. The Attorney-General declines to give an opinion upon the question whether a bond taken by the collector of a port from one of his subordinates, for his own protection, is valid in the absence of a statute authorizing it, it not appearing to be a question in which the United States are concerned or one arising in the administration of a Department. 19 Op. 556.

28. The Attorney-General declines to give an opinion upon a question as to the meaning of a Territorial statute, where the question does not appear to have arisen in the administration of the Department proposing it. 19 Op. 695.

29. The Attorney-General is not authorized by law to respond by an official opinion as to a question of law not arising in the Department from which the inquiry is sent, or as to one not shown to be pending and of present executive consequence. 20 Op. 50.

30. The Attorney-General is not authorized to review, at the request of the Secretary of the Interior, the decisions of the Civil Service Commission on the construction of Departmental Rule X in regard to reinstatement, for the reason that under that rule the matter of certification rests with the Commission, and, the Commission having decided adversely to the applicant, there is now no question in the matter pending before the Interior Department. 20 Op. 158.

31. The Attorney-General is not authorized to give his opinion to the Secretary of the Treasury as to the proper construction of a pension appropriation act, inasmuch as it appears that the Treasury Department is bound by the rulings of the Department of the Interior in construing that law, and therefore no question is pending in the Treasury Department arising in the administration of that Department (17 Op. 339, followed). 20 Op. 178.

32. The Attorney-General is not required to give an opinion except on such questions as are necessary to guide the heads of Departments in their actions. This does not include questions which it is the duty of a subordinate in a Department to determine, and which may never come before the head of the Department for action (11 Op. 4, followed). 20 Op. 251.

33. Unless the head of a Department has to pass upon a matter, it is not one calling for an opinion of the Attorney-General. 20 Op. 279.

34. The question as to whether the Civil Service Commission shall issue a certificate for reinstatement of an officer of the Treasury Department is not one arising in the administration of the Treasury Department, and is therefore not a question upon which it would be proper for the Attorney-General to express an opinion at the request of the Secretary of the Treasury. 20 Op. 312.

35. That question is one which, perhaps, affects the administration of the Treasury Department, but it is not one which the Secretary, as the head of the Department, is called upon to decide in its administration. *Ib.*

36. The Attorney-General can not properly give an opinion where it does not appear that some question exists calling for the action of the Department requesting it. 20 Op. 383.

37. The Attorney-General will express no opinion where the matter is not one requiring the action of the head of a Department as falling within his official duties. 20 Op. 420.

38. The Attorney-General is not at liberty to submit an opinion upon questions that have been decided by an Executive Department, nor upon those that may arise. 20 Op. 440.

39. To warrant an opinion, the question must not only be one arising in the administration of a Department, but it must be still pending. *Ib.*

40. The Attorney-General is not authorized to give his opinion upon the application of the eight-hour law to a proposed contract, where the contractors whose bids have been accepted desire to be advised before signing the contract what portion of the work that law will affect, as it is not a question which the Secretary of the Treasury is called upon to decide. 20 Op. 463.

41. The Attorney-General can not give an opinion upon a judicial question, or one not arising in the administration of a Department within the meaning of section 356, Revised Statutes. 21 Op. 369.

42. Under section 356 of the Revised Statutes the head of an Executive Department is authorized to require the opinion of the Attorney-General only on questions arising in the administration of his Department. 21 Op. 478.

43. It is not permissible for the Attorney-General to give an opinion upon the application of the eight-hour law to contracts for the construction of levees on the Mississippi River, as that is not a question arising in the administration of one of the Departments. 20 Op. 465.

44. The Attorney-General declines to give an opinion as to whether the so-called eight-hour law is applicable to a certain contract for public work, for the reason that the contractor and not the Secretary of the Treasury is responsible for a violation of the law. 20 Op. 500.

45. The Attorney-General is neither required nor authorized to give an opinion to the head of a Department except in cases actually pending for decision by him in such Department. 20 Op. 536.

46. The Attorney-General is prohibited from giving an opinion unless an occasion has actually arisen requiring the action of a head of a Department. 20 Op. 583.

47. The power of the Attorney-General to give an opinion on request of the head of a Department is confined to questions of law, arising in the administration of the Department calling for the opinion. 20 Op. 588.

48. The Attorney-General can give official opinions only upon questions of law actually arising in the administration of the Department, which are at the time pending, and which must be determined in order that the work of the Department may be properly administered; he is reluctant to pass upon any question whose answer may bring the Department of Justice into conflict with a judicial tribunal. 20 Op. 618.

49. The question as to the right of a State judge to compel an employee of the Federal Government to perform jury duty, not decided, as no such serious occasion is shown to have arisen as would justify the Attorney-General reviewing the ruling of a State judge. *Ib.*

50. The Attorney-General can not properly give an opinion as to whether if a certain Chinaman should visit his native country he could thereafter lawfully return to the United States, as it is not a question arising in the administration of an Executive Department. 20 Op. 667.

51. Registration of vessels.—The Attorney-General can not properly be asked, for the information of the owners of a vessel, whether

if they rebuilt their vessel in Canada it could be thereafter reregistered as a vessel built in the United States, for the reason that it is not a question arising in the administration of the Treasury Department. 20 Op. 723.

52. The Attorney-General's opinion can not be asked by the Secretary of the Interior upon questions relating only to the duties of the Commission to the Five Civilized Tribes appointed under section 16 of the act of March 3, 1893 (27 Stat. 645), as he, the Secretary, has no control over the proceedings of the Commission. 20 Op. 724.

53. The Attorney-General can not give an official opinion upon a case which has not yet actually arisen. 20 Op. 729.

54. Certain steamship companies disputed the validity of the Treasury Department's regulations, holding them liable under the immigration act of March 3, 1891 (26 Stat. 1084), for the maintenance and transportation to the seaboard of certain alien immigrants who had reached the interior of the country: Held that as there was no way of enforcing the statute against the steamship companies except through the courts, the question is not one arising in the administration of that Department and the Attorney-General can not properly express his opinion thereon. 21 Op. 6.

55. The question as to how far a certain judgment was void for want of jurisdiction should not be determined until actually presented for decision in a case in which a party to such judgment shall be a party. 21 Op. 37.

56. The Attorney-General will not express an official opinion upon a question not presently arising in the administration of an Executive Department. 21 Op. 106.

57. The Attorney-General can not give an official opinion as to the scope of a statutory provision further than to answer questions presently arising in the administration of the Department making the inquiry. 21 Op. 106.

58. The Attorney-General can only advise on cases actually and presently arising. 21 Op. 109.

59. The Attorney-General declines to express an opinion upon a question propounded, because not based upon a case which has actually arisen in the administration of the Department of Agriculture. 21 Op. 167.

19 Op. 332, 412, and 20 Op. 703, 729 followed. *Ib.*



60. An opinion can not be given by the Attorney-General upon a case not actually arising in the Department the head of which requests the opinion. 21 Op. 178.

61. The Attorney-General will not answer questions not presently arising in the administration of a Department whence the inquiry arises. 21 Op. 186.

62. The Attorney-General can not be called upon for an opinion unless specific questions of law are formulated which relate to an existing question calling for the action of the Department requesting it. 21 Op. 201.

63. Exception made.—A question of the legality of a provision of long standing in contracts of the War and Navy Departments determined, as presented, in general terms, although a strict regard to the rule of the Department of Justice which forbids the expression of an official opinion upon any question of law which has not arisen in an existing case and presented upon a definite statement of facts, might warrant a refusal of an opinion thereon. 21 Op. 207.

64. The Attorney-General can give no opinion upon a case not actually arising in the Department the head of which requests the opinion. 21 Op. 219.

65. The Attorney-General will not give an opinion upon a matter not pending in the administration of a Department. 21 Op. 240.

66. The Attorney-General will not give an opinion upon a question proposed by the Secretary of War, where no occasion has arisen for his official action. 21 Op. 457.

67. Under section 356 of the Revised Statutes the head of an Executive Department is authorized to require the opinion of the Attorney-General only on questions arising in the administration of his Department. 21 Op. 478.

68. The Attorney-General is not permitted by statute or precedent to respond to a request for an opinion which appears to present but a moot case and does not show what the facts are or that the case has presently arisen in the administration of the Department. 21 Op. 506.

69. The Attorney-General is not permitted to give an opinion as to the construction or interpretation of a statute except in an actual case which has arisen before one of the Executive Departments calling for its action in the regular course of its affairs. 21 Op. 510.

70. Same.—The question as to whether a retired officer is eligible to hold certain diplomatic or consular appointments without affecting his position on the retired list, with rank and pay, is one of private concern only, and not a subject with which the United States can be interested until some action has been taken by such officers. *Ib.*

71. The cases in which the Attorney-General is authorized to give opinions to the heads of Executive Departments are such as are actually pending in such Departments and involving the legal questions submitted. 21 Op. 568.

72. The rule of the Attorney-General in declining to give an opinion in a case where it is doubtful whether a question of law is raised in the administration of the Department requesting it was disregarded in an instance where it appeared that proper cases raising such a question were pending in several of the other Executive Departments. 21 Op. 579.

73. The Attorney-General is precluded from giving an opinion upon a matter not actually or presently arising in the administration of a Department. 22 Op. 77.

74. The Attorney-General is not authorized to answer an inquiry made of the Treasury Department with reference to an increase in the amount of subsidiary silver coinage, whether regarded as an abstract question of law or an inquiry into the legality of the course of a predecessor in office in matters not now demanding official action. 22 Op. 85.

75. To authorize the expression of an opinion upon a question of law it is necessary that a statement of facts be submitted showing that the question has actually arisen in the administration of a Department in an existing case calling for action. *Ib.*

76. The question of the validity of a proposed regulation of the Treasury Department providing that in case a Chinese laborer who has left the United States upon a valid return certificate is delayed beyond one year from the date of his departure by reason of sickness or other disability beyond his control, the consular representative of the United States shall certify to such facts before the Chinaman shall be admitted into this country, not being a question actually or presently arising in the administration of the Treasury Department, the Attorney-General declines to express his opinion thereon. 23 Op. 582.

77. **Same.**—Should this proposed regulation be promulgated, and the question of its validity arise in that Department, as upon an appeal under the act of August 18, 1894 (28 Stat. 390), the right and duty of the Attorney-General to reply to the question would be untrammelled. *Id.*

78. **Case actually arising.**—The settled policy of the Department is that no opinion should be rendered upon any question of law unless it is specifically formulated in a case actually arising in the administration of a Department, and accompanied by a statement or finding of the facts involved. 24 Op. 59.

79. **Same.**—The Attorney-General declines to express an opinion upon the question whether the joint resolution of July 1, 1902 (32 Stat. 750), construing the pension act of June 27, 1890 (26 Stat. 182), has any retro-active force, for the reason that the question is not predicated upon an actual case arising in the Interior Department, and for the further reason that that Department has an officer clothed with authority to determine questions of that nature in the first instance coming up on appeal from the Pension Bureau. 24 Op. 556.

80. The Attorney-General declines to answer the question whether citizens of the Philippine Islands are entitled to the benefits of the patent laws of the United States, there being no case involving that question pending before the Department making the inquiry. 25 Op. 179.

81. The Attorney-General declines to express an opinion upon the question propounded by the Secretary of the Interior as to whether the preliminary draft of Title LXVIII, "Railway and Telegraph Companies," submitted to him by the Commission to Revise and Codify the Laws of the United States, correctly embodies the provisions of existing law upon the subject, for the reason that the inquiry does not present a question of law arising in the administration of his Department. 25 Op. 584.

*c. Opinion in Advance—For Future Action.*

82. The Attorney-General declines to give an opinion in advance, where no case actually existing is presented, as to what would in future be held upon indefinite and varying facts. 19 Op. 414.

83. The Attorney-General can not be asked to examine and approve codes of rules or forms of applications, etc., adopted by a Department, to apply to cases arising in the future. 20 Op. 738.

84. The Attorney-General can not state as a basis for future Departmental action, the classes of Chinese persons whose occupations would place them within the category of laborer. He can only answer as to each case when it arises. 20 Op. 602.

*d. Moot Questions.*

85. An opinion is given upon a mere moot question, although in accordance with custom it might with propriety be declined. 21 Op. 320.

86. The Attorney-General will not give an opinion upon an inquiry which appears to present but a moot case. 21 Op. 506.

87. A request for an opinion of the Attorney-General must not relate to a mere moot question, but to one which requires immediate action, the answer to which is necessary for the protection of the officer making the inquiry or to insure the lawfulness of the action which he is about to take. 21 Op. 509.

*e. Hypothetical Questions.*

88. The Attorney-General will not answer a purely hypothetical question. 20 Op. 288.

89. The question as to whether the parts of a vessel which a British subject proposes to take to Alaska by ocean steamer for use on the Yukon River will be subject to duty, being a hypothetical one, is not answered. 22 Op. 77.

90. The Attorney-General declines to express an opinion upon the question whether the Postmaster-General should enter into a contract with the Return Postage Clearing Company for the institution of the "reply envelope and postal card" scheme, for the reason that the question is hypothetical in its nature and involves considerations of administrative discretion and judgment, and of practicability and advisability, which must be determined solely by the Postmaster-General. 24 Op. 118.

91. The Attorney-General declines to express an opinion as to whether a proposed instruction to customs officials to inquire into the *bona fides* of a journey and the ownership of goods imported can be enforced on proof

that the object of the journey was to purchase goods, as the latter is a hypothetical as well as a judicial question. 25 Op. 94.

*f. Contemplated Changes in Laws.*

92. It is not within the province of the Attorney-General to consider questions looking to changes in maritime law to be accomplished by treaty with foreign Governments. 19 Op. 598.

93. Section 356 Revised Statutes limits the functions of the Attorney-General in the matter of opinions requested by the heads of Departments, to questions arising out of the law as it is, and does not require him to give his views and opinions upon the advisability of making changes, by treaty, in any department of jurisprudence. *Ib.*

*g. Effect of—Guidance.*

94. It has been held frequently that the statutes prescribing the duties of the Attorney-General (Secs. 354 and 356, Rev. Stat.) do not authorize or require him to give an official opinion except to the President or to the head of an Executive Department; and it would seem to follow that the opinion should be needed for the guidance of the head of a Department, and should relate to some matter calling for action or decision on his part. 20 Op. 609.

95. An opinion asked of the Attorney-General must be one needed for the guidance of the officer asking. 20 Op. 724.

96. Can not require Attorney-General's opinion unless it is the intention to be guided by it.—The head of a Department can not require the Attorney-General's opinion as to his power to do an act unless it is his intention to do it if he has the power. 20 Op. 648.

97. It is not the duty of the Attorney-General to give an opinion on questions submitted to him except when needed for the guidance of the head of a Department, and relating to some matter calling for action or decision on his part. 21 Op. 174.

98. Effect.—Official opinions of the Attorney-General should be followed by other Departments. 20 Op. 648.

Adhered to. 20 Op. 719.

99. An expression in an opinion of the Attorney-General which is merely obiter does not have the force and effect of an official opinion. 21 Op. 25.

*h. Departmental Regulations and Practice.*

100. The Attorney-General will not interpret a regulation of practice made by the Commissioner of Patents for his own guidance and that of his subordinates, for the convenient, intelligent, and orderly disposal of the business of his office. Such regulations, which the heads of bureaus and Departments can make, modify, or annul at will, or enforce or waive, as seems expedient, may well be left for their interpretation to the head of the Department or bureau to which they pertain. 18 Op. 521.

101. The construction of regulations of the Civil Service Commission is a matter entirely within the province of the Commission, and should not be attempted by the Attorney-General. 20 Op. 649.

102. The Attorney-General declined to pass upon the original merits of a doubtful question, where the departmental practice had been in accordance with a decision of the Board of General Appraisers. Such practice should not be changed without a decision of the court. 20 Op. 730.

103. The Attorney-General can not give an official opinion upon the construction of customs regulations which may be modified at any time by the Secretary of the Treasury. 21 Op. 255.

104. The question as to whether or not a citizen of Porto Rico, legally a resident of New York, is eligible for appointment in the Marine-Hospital Service under a departmental regulation which requires the applicant to be a citizen of the United States, or, if of foreign birth, to furnish proof of American citizenship, does not involve any question of law within the meaning of section 356, Revised Statutes, and is not, therefore, one properly calling for an opinion of the Attorney-General. The requirement not being demanded by law, its interpretation may properly be left to the Department or Bureau responsible for its existence and execution. (18 Op. 521; 20 Op. 649; 21 Op. 255, followed.) 25 Op. 183.

*i. Administration, Discretion, Propriety, Expediency.*

105. Questions of administrative action.—The opinions of the Attorney-General are advisory only. He has no control over the

action of the head of Department at whose request and to whom an opinion is given, nor could he with propriety express any judgment concerning the disposition of the matter to which the opinion relates, that being something wholly within the administrative sphere of such head of Department. 17 Op. 332.

106. The Attorney-General declines to express an opinion upon the question whether the Postmaster-General should enter into a contract with the Return Postage Clearing Company for the institution of the "reply envelope and postal card" scheme, for the reason that the question is hypothetical in its nature and involves considerations of administrative discretion and judgment, and of practicability and advisability, which must be determined solely by the Postmaster-General. 24 Op. 118.

107. The Attorney-General declines to express an opinion upon the question of the propriety of the Secretary of the Interior permitting one Boysen to go upon the Shoshone Indian Reservation and make examinations prior to the completion and approval of the surveys of the ceded portion (33 Stat. 1020), it not being within his province to pass upon the propriety of the exercise by the Secretary of the Interior of his official discretion. 25 Op. 524.

108. The Attorney-General declines to express an opinion as to the propriety of a proposed instruction to customs officials to inquire into the *bona fides* of the journey and the ownership of goods imported in such cases, as he is not authorized to express his views upon matters of propriety involving executive judgment and discretion; neither may he express an opinion as to whether the above provision can be enforced on proof that the object of the journey was to purchase goods, as the latter is a hypothetical as well as a judicial question. The legality of such an instruction, however, can not be seriously questioned. 25 Op. 94.

109. The Attorney-General is not authorized to give an official opinion as to "the course which should be taken" by another Department, as that involves questions of fact and considerations of expediency. 21 Op. 73.

110. A question as to what course should be pursued by an Executive Department involves matters of fact upon which the Attorney-General may not have knowledge

and considerations of expediency upon which it is not for him to pass judgment. 22 Op. 98.

*See also* 21 Op. 74.

111. Where terms are used in a statute in their ordinary acceptation and the duty of applying it in a particular matter is one of administration merely, that duty can not be devolved upon the Attorney-General. 20 Op. 487.

112. The Attorney-General has no authority to give an opinion upon the reasonableness of fees demanded by persons proposing to act as attorneys for Indian litigants. 20 Op. 620.

113. The nature of the evidence required from applicants for leave and sufficiency of reasons for extending or limiting hours of labor are matters within the discretion of the Secretary as to which the Attorney-General can not advise. 20 Op. 728.

j. *Matters belonging to the Department of Justice—Suits—Prosecutions.*

114. The question whether an action for the recovery of duties on goods previously smuggled is maintainable, is one arising in the Department of Justice, and therefore the Attorney-General's opinion can not be asked upon it by the Treasury Department. 20 Op. 714.

115. It is inexpedient for the Attorney-General to render an official opinion as to whether a civil suit or criminal prosecution if brought by the Government ought to be decided by the courts in its favor, such questions being essentially judicial in character. 20 Op. 702.

116. The advisability of bringing suit is not a question of law upon which the Attorney-General's opinion may be asked. *Ib.*

117. The Attorney-General can not properly be asked for advice as to whether or not a prosecution should be instituted. 20 Op. 673.

118. The question whether or not to commence a civil action or criminal prosecution must ordinarily be decided by some officer of the Department of Justice, and the Attorney-General is not authorized to give the head of another Department a legal opinion upon such a question. 21 Op. 509.

119. The Attorney-General can not give an official opinion regarding the act of May 16, 1884 (23 Stat. 22), because that act relates only to criminal proceedings, and the question whether or not a crime has been committed is one that in but rare instances can arise except in the Department of Justice. 21 Op. 133.

120. The Attorney-General should not give an opinion upon a question as to whether or not there is sufficient probability of securing a verdict to warrant a prosecution, as that is not purely a matter of law. *Ib.*

121. **Compromise of pending litigation.**—Except as modified by sections 3229 and 2469, Revised Statutes, the power to determine whether a compromise should be made of pending litigation would seem to rest with the Attorney-General, such suits being necessarily under his control and subject to his direction. 23 Op. 507.

122. The Attorney-General declines to express an opinion upon the question whether proceedings by court-martial would bar proceedings in the civil courts for an assault or other crime involved in the offense of hazing, for the reason that it would be of no assistance to those officers in the proper discharge of their duties, and should such action be taken, the matter would be one peculiarly for the consideration of his Department. 25 Op. 543.

#### k. Definitions.

123. The Attorney-General can not properly attempt to frame a definition of statutory language to cover all future cases. 20 Op. 649.

124. The Attorney-General can not give an official opinion as to the scope of a statutory provision further than to answer questions presently arising in the administration of the Department making the inquiry. 21 Op. 106.

125. The Attorney-General can not undertake to give a general definition of a word or phrase applicable to all cases possibly arising therefrom. 21 Op. 109.

#### l. Evidence and Papers, Examination of, to Form Conclusions of Facts.

126. The Attorney-General's advisory powers do not extend to an examination of evidence to ascertain what is established by a preponderance of testimony. 17 Op. 172.

127. A request for an opinion of the Attorney-General on questions of law arising in any case should be accompanied by a statement of the facts of the case as well as of the questions on which advice is desired. The Attorney-General declines to settle the facts *ex parte* from papers submitted and then proceed to give an opinion thereon. 18 Op. 487.

128. The Attorney-General has no power to find facts in any case in which his opinion is requested, but must confine himself to the facts appearing in connection with the request. 19 Op. 115.

129. **Will not examine papers submitted to ascertain facts involved.**—The Attorney-General declines to express an opinion in a matter where no statement of facts and no question of law is submitted, but where numerous papers are referred with a request for an opinion in view of all the facts presented. 19 Op. 396.

130. The Department of Justice has uniformly declined to find the facts involved in a request for an opinion. At least this has been the rule ever since the year 1820. The facts must be stated by the Department asking for the opinion. (*See* 1 Op. 346; 3 Op. 309; 5 Op. 626; 10 Op. 267; 12 Op. 206.) 19 Op. 466.

131. The Attorney-General is not at liberty under the law, which requires him to give his opinion "upon questions of law" (secs. 354–357 Rev. Stat.), to make a finding of facts upon evidence submitted. 19 Op. 547.

132. The Attorney-General declines to express an opinion upon a question which requires him to look into the evidence and form a conclusion as to the facts involved. (*See* 7 Op. 494; 14 Op. 367, 368, 541; 10 Op. 267; 11 Op. 189; 18 Op. 487, 489.) 19 Op. 672.

133. The Attorney-General can not pass upon the question as to whether a bridge is an "unreasonable" obstruction, and its maintenance a violation of law, as its determination involves an examination of all the facts, circumstances, and equities surrounding the case. 19 Op. 676.

134. The Attorney-General must confine himself to the case stated for an opinion and is not authorized to look into the evidence. 19 Op. 684.

135. It is not within the province of the Attorney-General to make a finding of facts in a case submitted for his opinion upon questions of law arising thereon. The facts of the case should be ascertained and presented by the officer requesting the opinion. 19 Op. 696.

136. The Attorney-General can not consider questions of fact on evidence submitted. 20 Op. 253.

137. The Attorney-General can not investigate the papers and records for the purpose of

ascertaining the facts upon which the question arises. 20 Op. 270.

138. The Attorney-General declines to authorize an investigation to be made in order that an official opinion may thereafter be rendered by him based on the result of such investigation. 20 Op. 640.

139. The Attorney-General is not authorized to examine evidence and make findings of fact upon which his opinion is to be based. *Ib.*

140. The Attorney-General can not be called upon for an opinion which involves the examination of evidence and the settling of questions of fact. 20 Op. 740.

141. The Attorney-General can not consider matter merely evidential in character and make findings of fact thereupon. He can use only the facts found by the person requesting the opinion, as in the case of an agreed statement of facts submitted to a court. 20 Op. 742.

142. The Attorney-General has no general appellate authority, and can not weigh evidence and make findings thereon. Questions of this kind referred to him are analogous to questions referred to the Supreme Court upon certificate of division of opinion in the lower courts. His decision can not operate as a disposition of the whole case if there is any doubt or incompleteness in the facts. 20 Op. 742.

143. The Attorney-General is not at liberty to comply with a request for a reconsideration of his opinion of June 8, 1894 (21 Op. 33), as it would involve consideration and decision upon conflicting evidence. 21 Op. 58.

144. Weight of evidence and credibility of witnesses are not questions to be considered in rendering an opinion. 21 Op. 58.

145. When an opinion is desired by the head of a Department a statement of facts upon which the question arises must be submitted. The Attorney-General can not investigate the papers for the purpose of ascertaining these facts. 21 Op. 220.

146. The Attorney-General is precluded from answering questions of fact or from considering questions of fact on evidence submitted. 21 Op. 594.

147. The Attorney-General can not undertake to settle conflicting questions of fact raised by various papers presented, but will look to the submitted statement of facts alone. 22 Op. 156.

148. The Attorney-General can not be required to extract a finding of facts from correspondence or reports. 22 Op. 342.

149. The Attorney-General can not take the responsibility of examining the papers in a case and gather therefrom a conclusion as to what particular matter he shall pass upon. 22 Op. 498.

#### *m. Questions of Fact.*

150. It is not the province of the Attorney-General to determine questions of fact. 17 Op. 436, 440.

151. The decision of a question of fact is not within the province of the Attorney-General. 19 Op. 105.

152. The Attorney-General can not consider questions of fact on evidence submitted. 20 Op. 253.

153. The Attorney-General is not at liberty and has no power under the law to express an opinion to the Postmaster-General on the question whether a certain publication is within the description of matter which the statute denominates second class, as that is a pure question of fact, which it is the province of the Postmaster-General to decide. 20 Op. 384.

154. Whether or not certain persons are within the so-called eight-hour labor law is a question of fact not for the Attorney-General to determine. 20 Op. 459.

155. The Attorney-General declines to express an opinion as to whether certain employees of the Mississippi Commission are "laborers" or "mechanics" within the meaning of the act of August 1, 1892 (27 Stat. 340), for the reason that those words are used in the statute in their ordinary sense, and the determination of that question is, therefore, a matter of administration only, involving the ascertainment of a question of fact, upon which the Attorney-General is not authorized to express an opinion. 20 Op. 487.

156. The Attorney-General should not express an opinion upon the question as to whose fault or neglect, if anyone's, it is that a wrongful payment has been made, as that is a question of fact, or mixed law and fact, which a court only can determine. 20 Op. 524.

157. Whether various schemes are "dependent on lot or chance" within the meaning of the lottery law, is a mere question of fact upon which the Attorney-General is not authorized to give an opinion. 20 Op. 530.

158. Whether certain compilers are scientific or professional experts, within the meaning of paragraph 7, of special departmental rule No. 1, of the Civil Service Commission, is entirely a matter of fact as to which the Attorney-General can express no opinion. 20 Op. 590.

159. The question of "similitude" under section 5430, Revised Statutes, is a question of fact as to which the Attorney-General is not permitted to render an official opinion. 20 Op. 697.

160. The question as to whether a person had a right by the laws and usages of the Sioux tribe to claim citizenship therein in 1889, is a question of fact which the Attorney-General is not qualified to decide. 20 Op. 742.

161. The Attorney-General is not authorized to give an official opinion upon the course to be pursued by an Executive Department, as that involves a question of fact and considerations of expediency. 21 Op. 73.

162. The laws of a foreign country are not known to the Attorney-General, but are facts to be proved by competent evidence. 21 Op. 80.

163. The Attorney-General can not give opinions upon questions of foreign law. 21 Op. 377.

164. The question as to whether one patent infringes upon others is a matter of fact upon which the Attorney-General will not express an official opinion. 21 Op. 96.

165. Questions of fraud, or intent or colorableness in a transaction, are questions of fact not within the authority of the Attorney-General to determine. 21 Op. 129.

166. Whether certain material or apparatus used in making pictures of foreign postage stamps come within the scope of section 4 of the act of February 10, 1891 (26 Stat. 742), is a question of fact, and an opinion thereon is declined. 21 Op. 133.

167. The Attorney-General is not permitted to render an official opinion upon questions of fact. (20 Op. 697, 711, and 740, followed.) 21 Op. 174.

168. The Attorney-General will not determine questions of fact. 21 Op. 240.

169. The existence of a usage affecting the legal definition of a statutory term is a question of fact upon which the Attorney-General will not give an opinion. 21 Op. 255.

170. The question of whether one trademark simulates another is one of fact upon

which the Attorney-General can not express an official opinion. 21 Op. 260.

171. The existence of a foreign law is a question of fact upon which the opinion of the Attorney-General can not be requested. 21 Op. 377.

172. The Attorney-General will not give an opinion upon a question of fact. 21 Op. 454.

173. It is not the province of the Attorney-General to inquire into matters of fact. 21 Op. 481 (483).

174. The Attorney-General is precluded from answering questions of fact or from considering questions of fact on evidence submitted. 21 Op. 594.

175. Questions of fact.—The Attorney-General can not determine questions of fact. He can only aid in an application of the law to facts already ascertained. 23 Op. 231.

*n. Statement of the Facts and the Questions of Law Arising Thereon.*

176. A request for an opinion of the Attorney-General on questions of law arising in any case should be accompanied by a statement of the facts of the case as well as of the questions on which advice is desired. 18 Op. 487.

177. It is not within the province of the Attorney-General to make a finding of facts in a case submitted for his opinion upon questions of law arising thereon. The facts of the case should be ascertained and presented by the officer requesting the opinion. 19 Op. 696.

178. The Attorney-General is unable to express an opinion upon the question as to whether the Indian agent at the La Pointe Agency, Wis., acting under instructions from the Indian Office or Department of the Interior, can dispose of and give valid title to pine timber cut on the Fond du Lac Reservation, Minn., the request therefor being unaccompanied by a statement of the facts involved. 19 Op. 465.

179. The Department of Justice has uniformly declined to find the facts involved in a request for an opinion. At least this has been the rule ever since the year 1820. The facts must be stated by the Department asking for the opinion. (See 1 Op. 346; 3 Op. 309; 5 Op. 626; 10 Op. 267; 12 Op. 206.) *Ib.* (466.)

180. The Attorney-General declines to give an opinion where the request therefor contains no statement of facts and presents no question of law. 20 Op. 220.

181. When an opinion is desired by the head of a Department, a statement of the facts upon which the question arises must be submitted. 20 Op. 270.

182. It is an unvarying practice of the Attorney-General before rendering an opinion to require a succinct statement of the facts and of the question of law arising thereon upon which an opinion is desired. 20 Op. 493.

183. The Attorney-General is not permitted to render an opinion unless the facts upon which the question arises are succinctly stated. 20 Op. 526.

184. The Attorney-General can not give an official opinion except upon a question of law which has already actually arisen and is submitted upon a definite statement of facts, not leaving it to him to draw inferences of fact from correspondence or documents. 20 Op. 614.

185. The Attorney-General can not properly give an official opinion except upon questions of law arising upon facts stated by the official requesting the opinion. 20 Op. 640.

186. It is well settled that the question to which an answer is required, as well as the statement of facts upon which the question is based, should be clearly contained in the request for an opinion. The Attorney-General should not be expected to seek out the facts and infer the question submitted from the correspondence inclosed. 20 Op. 699.

187. Requests for opinions of the Attorney-General should be accompanied by a definite statement of the material facts and a formulation of the questions to which an answer is desired. 20 Op. 711.

188. Where an official opinion from the head of this Department is desired on questions of law arising on any case, the request should be accompanied by a statement of the material facts of the case, and also the precise questions on which advice is wanted. 20 Op. 713.

189. Requests for the opinions of the Attorney-General must be accompanied with a statement of facts and separate formulation of the questions to which an answer is desired. 20 Op. 723.

190. The Attorney-General can not give official opinions except upon questions of law,

nor without a definite statement of the facts upon which the question is submitted. 21 Op. 36.

191. Questions submitted to the Attorney-General for his opinion must be definitely formulated. 21 Op. 179.

192. Exception.—A question of the legality of a provision of long standing in contracts of the War and Navy Departments determined, as presented, in general terms, though a strict regard to the rule of the Department of Justice which forbids the expression of an official opinion upon any question of law which has not arisen in an existing case and presented upon a definite statement of facts, might warrant a refusal of an opinion thereon. 21 Op. 207.

193. When an opinion is desired by the head of a Department a statement of facts upon which the question arises must be submitted. The Attorney-General can not investigate the papers for the purpose of ascertaining these facts. 21 Op. 220.

194. The Attorney-General waives the settled practice of the Department requiring a statement of the points upon which an opinion is asked for the reason that it is desired for guidance of the head of an Executive Department in the discharge of official duties, where both public and private interests are involved requiring prompt action. 21 Op. 486.

195. The Attorney-General is not permitted by statute or precedent to respond to a request for an opinion which appears to present but a moot case and does not show what the facts are or that the case has presently arisen in the administration of the Department. 21 Op. 506.

196. In the absence of facts presenting a case actually or presently arising and pending in the administration of a Department, calling for action, which can not be determined by the Attorney-General without usurping judicial functions, his official opinion can not be required. 21 Op. 583.

197. To authorize the expression of an opinion upon a question of law it is necessary that a statement of facts be submitted showing that the question has actually arisen in the administration of a Department in an existing case calling for action. 22 Op. 85.

198. In a request for an opinion the facts must be definitely formulated and clearly stated by the person asking the opinion. The Attorney-General can not be required to ex-



tract a finding of facts from correspondence or reports. 22 Op. 342.

199. When an opinion is desired of the Attorney-General, the particular question of law on which his advice is desired should be specifically formulated, and the facts which exist or are assumed as the basis of such question should also be definitely stated. 22 Op. 351.

200. Waiver of customary practice requiring statement of facts.—In a certain case involving governmental transactions where there were no disputed facts, the Attorney-General deemed it proper to gather the various circumstances from the papers presented and to waive the customary rule of the Department requiring a definite statement of the facts upon which an opinion is requested. 22 Op. 477.

201. When the opinion of the Attorney-General is required it is necessary that the facts be plainly stated, and the questions upon which the opinion is desired should be specifically propounded. 22 Op. 498.

202. The Attorney-General can not take the responsibility of examining the papers in a case and gather therefrom a conclusion as to what particular matters he shall pass upon. *Id.*

203. When an opinion is desired from the Attorney-General, the question to which an answer is desired, as well as a statement of the facts upon which the question is based, should be clearly set forth in the request. 23 Op. 92.

204. Under the rules regulating the opinions of the Attorney-General, it is necessary that the question of law presented should rest upon some case actually arising in the administration of a Department and that it should be accompanied by a statement or finding of the facts involved. 23 Op. 330.

205. When an opinion is desired from the Attorney-General, the facts which exist or are assumed as the basis of the inquiry, should be definitely stated. The Attorney-General can not safely assume that facts not stated probably exist. 23 Op. 507.

206. It is not the duty of the Attorney-General and he can not, from the meager facts submitted, determine the question of good faith or intention on the part of the deserting sailors from the British steamship *Columbia*, as to whether they came to this country pursuant to their calling, intending

to ship again, or as immigrants. That duty rests with the Treasury Department. 23 Op. 521.

207. The settled policy of the Department is that no opinion should be rendered upon any question of law unless it is specifically formulated in a case actually arising in the administration of a Department and accompanied by a statement or finding of the facts involved. 24 Op. 59.

208. It is the invariable rule of the Department of Justice to decline to give an opinion, except when the request is accompanied by a statement or finding of the facts involved. 24 Op. 102.

#### *o. Questions of Law.*

209. The Attorney-General declines to give an opinion where the request therefor contains no statement of fact and presents no questions of law. 20 Op. 220.

210. The Attorney-General will not give an opinion where the subject-matter submitted shows no question of law arising in the administration of the Department submitting the inquiry. 20 Op. 249.

211. The Attorney-General is required to answer only questions of law and can not consider questions of fact on evidence submitted. 20 Op. 253.

212. It is against the practice of the Department of Justice to give an opinion upon a question so general as not to present a definite question of law for opinion. 20 Op. 258.

213. The Attorney-General is precluded from answering the question as to whether the appointment of an Indian agent as a deputy marshal is likely to cause any contention or conflict of authority, as that is not a legal question. 20 Op. 494.

214. The Attorney-General can not properly give an official opinion except upon questions of law arising upon facts stated by the official requesting the opinion. 20 Op. 640.

215. The Attorney-General should not give an opinion upon a question as to whether or not there is sufficient probability of securing a verdict to warrant a prosecution, as that is not purely a matter of law. 21 Op. 133.

216. The Attorney-General can not be called upon for an opinion unless specific questions of law are formulated which relate to an existing question calling for the action of the Department requesting it. 21 Op. 201.

**217. Exception.**—The rule of the Attorney-General in declining to give an opinion in a case where it is doubtful whether a question of law is raised in the administration of the Department requesting it was disregarded in an instance where it appeared that proper cases raising such a question were pending in several of the other Executive Departments. 21 Op. 579.

**218.** The Attorney-General will not express an opinion upon a question unless the request is accompanied by a definite statement of facts, and the question of law upon which an opinion is desired is specifically formulated. 23 Op. 472.

*p. Questions of Mixed Fact and Law.*

**219.** The Attorney-General should not express an opinion upon the question as to whose fault or negligence, if anyone's, it is that a wrongful payment has been made, as that is a question of fact or of mixed law and fact which only a court can determine. 20 Op. 524.

**220.** The Attorney-General can not be asked to exercise appellate jurisdiction upon mixed questions of fact and law. 20 Op. 711.

*q. Important Questions.*

**221.** A question regarding the construction of section 96 of the act of January 12, 1895 (28 Stat. 624), which provides that "The Postmaster-General shall contract for all envelopes, stamped or otherwise, designed for sale to the public or for use by his own or other Departments," is a **general question**, applicable to all the Departments, and is of **sufficient importance** to warrant its submission to the Attorney-General for his opinion thereon. 21 Op. 181.

*See also Nos. 257-265.*

*r. Judicial Questions.*

**222.** It is not proper for the Attorney-General to express an opinion upon the meaning of the word "destitute" as used in section 4577, Revised Statutes, in view of the conflict in that regard between the Department of State and a United States district court. The question is a **judicial one** and should be settled by the courts. 19 Op. 25.

**223.** It is **inexpedient** for the Attorney-General to express an opinion upon certain questions proposed, relating to a right of fishery in the Klamath River, California, claimed in behalf of the Klamath Indians; **such questions being justiciable in the appropriate courts** at the suit of the Indians themselves who are interested in them. 19 Op. 56.

**224.** The Attorney-General deems it **inexpedient** to give an opinion upon a question which is essentially judicial in its character and must ultimately be decided by the judicial department of the Government, to wit, whether an express company, in receiving from a lottery company letters and packages declared unmailable by section 3894, Revised Statutes, as amended by the act of September 19, 1890 (26 Stat. 465), and forwarding them along the ordinary mail routes, violates section 3982, Revised Statutes. 19 Op. 670.

**225.** The Attorney-General declines to express an opinion on the question whether or not certain pictures of coins constitute a violation of section 3 of the act of February 10, 1891 (26 Stat. 742), on the ground that it is **one for the determination of the courts**, not for the Executive Departments. 20 Op. 210.

**226.** The question as to the right of a State to tax lands in an Indian reservation being **judicial and not administrative**, the Attorney-General ought not to express an opinion thereon. (19 Op. 56, followed.) 20 Op. 277.

**227.** The question as to the right of an irrigation company to construct a dam across the Yakima River, which is one of the boundaries of the Yakima Indian Reservation, is not one arising in a matter before the Interior Department, as the Secretary has no authority to settle that question. It is **essentially judicial in character**, and therefore the Attorney-General has **no power to give an opinion thereon**. 20 Op. 314.

**228.** The jurisdiction of consuls as courts is a **judicial question**, subject to review by regular appeal provided by statute, and therefore it is **beyond the power of the Attorney-General to express an opinion thereon**. 20 Op. 391.

**229.** The Attorney-General will not answer a question purely judicial in its nature. 20 Op. 539.

**230.** The Attorney-General is reluctant to pass upon any question whose answer may

bring the Department of Justice into conflict with a judicial tribunal. 20 Op. 618.

231. The Attorney-General should not answer the question as to whether "building, loan, and savings associations" are "corporations doing the business of bankers, brokers, or savings institutions" within the meaning of section 5243, Revised Statutes, and as such prohibited from using the word "national" as a portion of their name or title, for the reason that the designation given does not afford sufficient information, and the question seems to be one for judicial rather than executive determination. 20 Op. 673.

232. It is inexpedient for the Attorney-General to render an official opinion as to whether a civil suit or criminal prosecution if brought by the Government ought to be decided by the courts in its favor, such questions being essentially judicial in character. 20 Op. 702.

233. The Attorney-General should not express an official opinion upon a judicial question as to which the circuit courts are in conflict. 20 Op. 729.

234. The Attorney-General can not give an opinion upon a judicial question, or one not arising in the administration of a Department within the meaning of section 356, Revised Statutes. 21 Op. 369.

235. Whether the statute of limitations does or does not bar a claim on behalf of the Government is a judicial question to be determined by the courts and not by the Attorney-General. 21 Op. 557.

236. The question whether a proceeding under section 3456, Revised Statutes, or any other law would or would not be successful, is judicial in its nature and one on which it is not necessary or proper for the Attorney-General to give an official opinion. 22 Op. 181.

237. It is not the practice of the Department of Justice to give an opinion in a matter where the question involved is disputable and is the subject of a pending suit, as such action would be equivalent to expressing an opinion as to whether the question ought to be decided in favor of the Government, and might bring the Department into conflict with a judicial tribunal. 23 Op. 221.

238. Question pending before the court.—The question of the right of transit of Chinese persons from a port of the United States to the territory of Mexico, or from a port of the

United States directly by sea to a foreign port, being now before the courts, it would not be proper for the Attorney-General to express an opinion thereon. 23 Op. 585.

239. Question committed to judicial review.—The Department will not consider any question committed to judicial review. To do so might bring it into conflict with a judicial tribunal. 24 Op. 59.

240. Conclusions of a Federal court, until reversed by a higher court, are binding upon the Attorney-General. *Ib.*

241. The Attorney-General can not properly pass upon the question whether the courts in this country have authority to execute letters rogatory issued out of the German patent office, as that is a matter for judicial and not for executive determination. 24 Op. 69.

242. The Attorney-General declines to express an opinion as to whether a proposed instruction to customs officials to inquire into the *bona fides* of a journey and the ownership of goods imported can be enforced on proof that the object of the journey was to purchase goods, as the latter is a hypothetical as well as a judicial question. 25 Op. 94.

243. The Attorney-General declines to express an opinion as to the liability of the postmaster at Baltimore, Md., for a sum of money paid by him to a former clerk in the Baltimore post-office and for which no service was performed, for the reason that the question is essentially a judicial one, amounting to an inquiry whether in regular legal proceedings a court and jury would hold that officer liable. *Advised*, however, that the circumstances may be regarded as showing a *prima facie* case of liability and calling for action in the way of securing a judicial determination of the question of liability. 25 Op. 97.

244. The Attorney-General declines to express an opinion upon the question whether a willful refusal to give true answers to inquiries concerning statistics which, by section 6 of the permanent census act of March 6, 1902 (32 Stat. 52), the Department of Commerce and Labor is authorized to collect would subject a person to the penalties prescribed by section 22 of the act of March 3, 1899 (30 Stat. 1020), for the reason that the question is preeminently one for judicial and not executive determination. 25 Op. 369.

*s. Payment or Disbursement—Comptroller of the Treasury.*

**245.** The Attorney-General declines to advise upon a question of refund, for the reason that the question can now be asked of the Comptroller of the Treasury. 21 Op. 188.

**246.** The question as to what appropriation the expense of printing the 760 copies of printing laws in slip form, authorized by section 56 of the act of January 12, 1895 (28 Stat. 609), is to be charged is one which may be asked of the Comptroller of the Treasury, and should not be answered by the Attorney-General. 21 Op. 405.

**247.** On questions of disbursements of money and payment of claims which are relegated by law to the Comptroller, the Attorney-General should not render an opinion. 21 Op. 530.

**248.** The Attorney-General should not render an opinion on a question involving the disbursement of money or the payment of claims, as the decision of the Comptroller of the Treasury upon such questions is final and binding. 22 Op. 581.

**249.** Except in matters of great importance the Attorney-General will not express an opinion upon any question involving a payment to be made by or under the head of an Executive Department. That duty, by the act of July 31, 1894 (28 Stat. 208), is imposed upon the Comptroller of the Treasury, whose opinion is binding and conclusive. 23 Op. 1.

**250.** The claim of Amelia Mary Hyde, administratrix, being one for the payment of money, and actually pending before the Treasury Department, the Attorney-General deems it inexpedient to consider it. Under the act of July 31, 1894 (28 Stat. 208), the question should be referred to the Comptroller of the Treasury for his decision. 23 Op. 2.

**251.** The claim of Dudley & Michener for the payment of a sum of money as compensation for the cancellation by the War Department of a contract entered into between that Department and the claimants for furnishing the Government with Mauser rifles is one which, under the act of July 31, 1894 (28 Stat. 208), and the decisions of this Department should be referred to the Comptroller of the Treasury for his opinion. 23 Op. 86.

**252.** The Attorney-General will not render an opinion upon questions which involve the

payment of money by the Treasury Department. That duty, by section 8 of the act of July 31, 1894 (28 Stat. 208), is imposed upon the Comptroller of the Treasury. 23 Op. 431.

**253.** It is neither advisable nor necessary for the Attorney-General to render a decision upon any question involving a payment to be made by or under the head of any Executive Department. Under section 8 of the act of July 31, 1894 (28 Stat. 208), the Comptroller of the Treasury is charged with this duty, and his decision is made final as to all executive officers. 23 Op. 468.

**254.** The Attorney-General declines to express an opinion upon the authority of the Secretary of the Treasury to refund a fine exacted, in lieu of the payment of duties upon certain merchandise brought into the United States from Porto Rico after the ratification of the treaty of 1898 with Spain and before the taking effect of the Porto Rican act, due protest against the exaction not having been made. That duty, by section 8 of the act of July 31, 1894 (28 Stat. 208), is imposed upon the Comptroller of the Treasury. 23 Op. 586.

**255.** It is not deemed necessary or desirable for the Attorney-General to express an opinion upon the question of granting extra compensation in lieu of annual leave to certain former employees of the Census Office, under a proviso to the deficiency appropriation act of June 30, 1902 (32 Stat. 571), that being a matter relating solely to payments out of the Treasury. By section 8 of the act of July 31, 1894 (28 Stat. 208), it is made the duty of the Comptroller of the Treasury to determine such questions. 24 Op. 85.

**256.** Payments out of the Treasury—Power of refund.—The Comptroller of the Treasury, rather than the Attorney-General, should pass upon the question of the power of refund and payment out of the Treasury of duty overpaid on an importation of merchandise. Opinions of March 26, 1901 (23 Op. 431), and July 20, 1901 (23 Op. 468), followed. 24 Op. 553.

**257.** Question already decided by the Comptroller involving a payment.—The Attorney-General declines to express an opinion upon the question whether a retired officer advanced in rank and pay by the Executive under the act of April 23, 1904, may be paid at the advanced rate before the Senate has

consented to the advancement, as that question has been decided by the Comptroller of the Treasury, whose decision, under section 8 of the act of July 31, 1894 (28 Stat. 208), is conclusive in law. 25 Op. 185.

**258. Exception—Matters of great importance.**—The opinion of the Attorney-General should not be rendered upon questions which, under section 8 of the act of July 31, 1894 (28 Stat. 207), could be referred to the Comptroller of the Treasury for decision, except in matters of great importance. 21 Op. 178.

**259. A question affecting all the Executive Departments** is answered by the Attorney-General, as it falls within the exception to the rule that his opinion should not be rendered upon questions which, under section 8 of the act of July 31, 1894, can be referred to the Comptroller for decision, except in matters of great importance, inasmuch as a conflict of precedents might arise. 21 Op. 181.

**260. An opinion which could have been asked of the Comptroller of the Treasury** is, notwithstanding, given by the Attorney-General, it appearing that the question is one of importance and the Comptroller joins in requesting it. 21 Op. 224.

**261. An important question as to refund, submitted at the request of the Comptroller of the Treasury,** is answered by the Attorney-General. 21 Op. 402.

**262. Questions of unusual importance involving a payment of money where the Comptroller concurs or joins in the request for an opinion** are exceptions to the general rule. 25 Op. 271.

**263. Questions involving payments to be made from Treasury—Rule not without exception.**—The authority conferred upon the Comptroller of the Treasury by section 8 of the act of July 31, 1894 (28 Stat. 208), to decide questions involving payments to be made from the Treasury is complete; but that act does not establish a rule which is universal and without exception. Congress did not, by that enactment intend to shorten the reach of sections 354 and 356, Revised Statutes, or to repeal *pro tanto* those sections. 25 Op. 301.

**264. Where a question is presented to the Attorney-General in accordance with law for decision,** and he is of opinion that the nature of the question is general and important in other respects than disbursement, and therefore conceives that it is proper for him to de-

liver his opinion, it is final and authoritative under the law, and should be so treated by the accounting officers of the Treasury, even though the question involves a payment to be made from the Treasury. *Ib.*

**265. When the Comptroller of the Treasury waives his right to determine a matter involving disbursements within the scope of his authority under the law and requests or suggests a ruling by the Attorney-General,** the Attorney-General's opinion should be controlling upon the accounting officers of the Treasury and should be followed by them unless contrary to some authoritative judicial decision. *Ib.*

**266. The Attorney-General declines to express an opinion upon the question whether the rent of a letter box in a post-office by an officer of the Army can, under section 3648, Revised Statutes, be paid in advance, for the reason that the precise question, which involves a payment of money from the Treasury, has been passed upon by the Comptroller of the Treasury; and as the question is not one of importance in other directions than disbursements,** the decision of the Comptroller will be regarded as conclusive. 25 Op. 614.

#### *t. The President.*

**267. President's right to call for an opinion not limited to questions of law.**—Article II, section 2, clause 1, of the Constitution provides that he "may require the opinion of the principal officer of each of the Executive Departments upon any subject relating to the duties of their respective offices." 23 Op. 360.

#### *u Private individuals—Opinions for Guidance of.*

**268. The Attorney-General is not authorized to give his opinion upon the application of the eight-hour law to a proposed contract, where the contractors whose bids have been accepted desire to be advised before signing the contract what portion of the work that law will affect, as it is not a question which the Secretary of the Treasury is called upon to decide.** 20 Op. 463.

**269. It is not the duty of the Attorney-General, nor has he the right, to give an official opinion for the guidance of persons proposing to enter into contract relations with the United States.** 20 Op. 465.

270. The Attorney-General declines to give an opinion as to the applicability of the so-called eight-hour law to a certain contract for public work, for the reason that the contractor, not the Secretary of the Treasury, is liable for the violation of the law. 20 Op. 500.

v. *Reasonableness or Unreasonableness.*

271. The Attorney-General is not required to determine whether the period of service of supervisors of elections is reasonable or unreasonable. 18 Op. 102.

272. The Attorney-General can not pass upon the question as to whether a bridge is an "unreasonable" obstruction, and its maintenance a violation of law, as its determination involves an examination of all the facts, circumstances, and equities surrounding the case. 19 Op. 676.

w. *Reconsideration of Opinions.*

273. A question once fully considered and answered by one Attorney-General can not with propriety be reconsidered by his successor, unless in some extraordinary case. 21 Op. 24.

274. A claim once fully considered and held unlawful by one Attorney-General can not, with propriety, be reconsidered by his successor, at least except in some extraordinary case. 21 Op. 264.

275. The principle announced in the opinion of Attorney-General Olney (21 Op. 23), that "a question once definitely answered by a former Attorney-General and left at rest for a long term of years should be reconsidered only in a very exceptional case," concurred in. 24 Op. 53.

x. *Solicitor of the Treasury.*

276. The Attorney-General will not, at the request of the Solicitor of the Treasury, consider and express his views as to the correctness of an opinion prepared by the latter upon a question submitted to him by the Secretary of the Treasury. 18 Op. 57.

See also TREASURY DEPARTMENT, II, j.

y. *Civil Service Commission.*

277. The Attorney-General declines to express an opinion upon the question submitted by the Civil Service Commission as to whether the Secretary of the Interior in employing

persons to make the transcripts of records and plats in the General Land Office authorized by the act of April 28, 1904 (33 Stat. 483), may select such persons without regard to the civil service act and rules, for the reason that the Secretary of the Interior and the Civil Service Commission have had no conference respecting the question and no disagreement thereon, as is required by the Executive order of November 29, 1904, before the matter may be submitted to the Attorney-General for his opinion. 25 Op. 492.

COMPENSATION OF UNITED STATES ATTORNEYS FOR SERVICES IN EXAMINING TITLES TO LAND. See UNITED STATES ATTORNEYS, 26-28.

COMPTROLLER OF THE TREASURY. See ATTORNEY-GENERAL II, s—Payment or disbursement.

DOUBTFUL QUESTIONS. See ATTORNEY-GENERAL, II, h—Departmental practice and Regulations.

MATTERS ONCE PASSED UPON. See ATTORNEY-GENERAL, II, w—Reconsideration.

OPINIONS IN ADVANCE. See ATTORNEY-GENERAL, II, c—Opinions in advance.

SCOPE OF STATUTORY PROVISION. See ATTORNEY-GENERAL, II, k—Definitions.

REASONABLENESS OF FEES. See ATTORNEY-GENERAL, II, i—Administration, discretion, etc.

## ATTORNEYS.

**Employment by an Executive Department prior to 1870—Payment.**—An attorney was employed by the War Department in 1868 to defend certain parties against whom suits were brought, in the result of which the Government was interested. The suits were not determined until some time after the passage of the act of June 22, 1870 (16 Stat. 162), up to which time the attorney was continued therein: *Advised* that the authority under which the attorney was originally employed was sufficient, and that the Secretary of War is authorized to pay for his services out of any fund under his control which may be available for that purpose. 18 Op. 124.

See also UNITED STATES ATTORNEYS.

**ATTORNEY'S FEES.**

*See* UNITED STATES ATTORNEYS; INDIANS, V, a; TREASURY DEPARTMENT, I, b, 11-14.

**AUDITORS.**

*See* TREASURY DEPARTMENT, II, g.

**AWARD.**

*See* ADMINISTRATION; DISTRICT OF COLUMBIA, XI.

**BEDEAU, CAPT. ADAM.**

*See* ARMY, II, c, 106-109.

**BADGES OF MILITARY ASSOCIATIONS.**

**Right to wear.**—The words "members of said organizations in their own right," as used in the joint resolution of September 25, 1890 (26 Stat. 681), which provides that the distinctive badges adopted by the military associations of men who served in the armies and navies of the United States during the various wars waged by the United States may be worn upon all occasions of ceremony by officers and enlisted men of the Army and Navy of the United States, include all those who, under the rules of these orders, were eligible for membership, either because of their own service or because of their kinship to one who had been in the service. 23 Op. 454.

**BAGGAGE RECEIPT.**

*See* INTERNAL REVENUE, II, f, 94.

**BANKS AND BANKING.****I. Banks, Generally, 1.****II. National Banks, 2-35.****III. State Banks, 36-38.****I. Generally.**

1. The proposed issue of interest-bearing bonds by the county commissioners of Floyd County, Ga., will not be in conflict with the banking laws of the United States. 21 Op. 70.

TAXATION. *See* INTERNAL REVENUE, II, c.

**II. National Banks.**

2. **Amendment of articles of association.**—National banking associations organized under the act of February 25, 1863 (12 Stat. 665), may amend their articles of association where this would not be in conflict with the provisions of the statute. 17 Op. 288.

3. **Same.**—Where such associations are so organized for a period of less than twenty years from the date of the act, they can not, by amending their articles, extend the period to twenty years from such date. *Ib.*

4. **Same.**—Where the articles provide for an increase of capital, and the maximum of such increase is once fixed by the determination of the Comptroller of the Currency, both his power and that of the association over the subject are exhausted. A further increase and a new maximum can not be effected by an amendment of the articles. *Ib.*

5. **Same.**—An amendment of the articles providing for an increase of the number of directors would not be inconsistent with the provision of section 5139, Revised Statutes, declaring that "No change shall be made in the articles of association by which the rights, remedies, or security of the existing creditors of the association shall be impaired." *Ib.*

6. **Same.**—The stockholders of an expiring association may organize a new one, and adopt for the latter the name of the former. *Ib.*

7. **Same.**—An association may, upon the expiration of the period limited for its duration, convert itself into a State bank under the

laws of the State, provided it has liquidated its affairs agreeably to the laws of Congress; and after it has thus become a State bank it may reconvert itself into a national banking association, under section 5154, Revised Statutes, and adopt the name of the expired corporation with the approval of the Comptroller of the Currency. *Ib.*

8. The expenses of proceedings instituted by the Comptroller of the Currency for the forfeiture of the charter of a national banking association, including the fee of the United States attorney for his services in such proceedings, should be defrayed out of the funds or assets of the association. 19 Op. 633.

9. Same.—What would be a reasonable fee for the services of the district attorney depends upon the circumstances of the particular case. *Ib.*

10. Suits and proceedings instituted by the receiver of a failed national bank to enforce the payment of a debt which may be maintained in a State court as well as in a United States court, fall within the provisions of section 380, Revised Statutes, and are therefore to be conducted by district attorneys under the direction of the Solicitor of the Treasury. 20 Op. 476.

11. Same.—A receiver of a failed national bank is an officer or agent of the United States within the meaning of said section. *Ib.*

12. Same.—The compensation of the United States attorney appearing for such receiver is not regulated by the fee bill prescribed by statute, nor should it be paid by the Government, but out of the funds of the trust. *Ib.*

13. Sale of assets—Dividend money.—If the receiver of a national bank has authority of the proper district court and the consent of every one of the creditors of the bank to a private sale of any of its assets, then the dividend money could be used to purchase such asset. The money thus used would again become assets of the bank for distribution. 20 Op. 269.

14. Same.—The Comptroller of the Currency can not inquire what use the creditors of a bank propose to make of a dividend paid them. *Ib.*

15. National banks desiring to withdraw their circulating notes and take up the bonds deposited with the United States Treasurer as security therefor, may do so, under section 4 of the act of June 20, 1874 (18 Stat. 124),

by depositing with the Treasurer the required amount in *lawful money*, which may consist either of coin or of legal tender notes. 17 Op. 121.

16. A national banking association may, under section 3 of the act of June 20, 1874 (18 Stat. 123), deposit coin in the Treasury for the redemption of its circulation. 17 Op. 144.

17. Same.—The Treasury, while privileged under sections 3 and 4 of that act to redeem such circulation in United States notes, has also the right to redeem the same circulation in coin. *Ib.*

18. Same.—The act of 1874 was not intended to repeal or affect the general provisions of law making the coins of the United States a legal tender in all payments. (Secs. 3585 et. seq. Rev. Stat.) *Ib.*

19. Certification of check where drawer has not the amount named actually on deposit.—Section 5208, Revised Statutes, and section 13 of the act of July 12, 1882 (22 Stat. 166) prohibits the certification of a check drawn upon a national bank, where at the time of certification the drawer has not on deposit with the bank, and regularly entered to his credit on its books, an amount of money equal to the amount of the check. 17 Op. 471.

20. Same.—Check marked "good" or "accepted."—Whether the check be marked by the bank "accepted," or simply "good," can make no difference; either constitutes a certification within the meaning of the statute. *Ib.*

21. Same.—The acceptance of a check, where the drawer has no funds on deposit, is a loan of the credit of the bank rather than a loan of money, and, if otherwise unobjectionable, is not within the restriction provided by section 5200, Revised Statutes. *Ib.*

22. Same.—Liabilities so incurred by a bank are within the limit imposed by section 5202, Revised Statutes. *Ib.*

23. Insolvent—Government subrogated to rights of private creditors, but is not a preferred creditor.—Where (as in the case of the First National Bank of New Orleans) a national bank is hopelessly insolvent, and the United States pays private creditors the amounts owed by the bank, the Government is subrogated to their claims against the bank, but is not entitled to be preferred. 17 Op. 360.



**24. Same—Dividends — Adjustment.**—Any amount received by the United States over and above the 70 per cent dividend declared by the Comptroller of the Currency in the case mentioned, can not be credited to the Comptroller. If other dividends are payable, the adjustment might be corrected, as the proceedings before the Comptroller are *in fieri* until the fund is completely administered. *Ib.*

**25. Same—Check marked "good."**—Where, after such bank was found to be insolvent, a creditor thereof who was indebted to the United States, and whom the records showed to be a depositor to the amount of \$315,879.10, delivered his check of that amount on the bank to an agent of the United States in part satisfaction of the debt, which check had been marked "good" by the receiving teller, who added his signature thereto: *Held* that the check created no obligation against the bank. *Ib.*

**26. Withdrawal of bonds deposited to secure circulation.**—A national bank whose charter is about to expire, but which has taken no steps toward going into liquidation under sections 5220 to 5224, Revised Statutes, can not withdraw all of the bonds deposited to secure its circulation, upon depositing lawful money equal to the amount of its outstanding circulation, notwithstanding the provisions of sections 5159 and 5160, Revised Statutes, and section 4 of the act of June 20, 1874 (18 Stat. 124). 17 Op. 409.

**27. Redemption—Retirement of circulation.**—Where certain 3 per cent bonds of the United States, held by the United States Treasurer as security for the circulating notes of a national bank, were called in for redemption and ceased to be interest bearing: *Advised* that unless the bank substitute interest-bearing bonds for the called bonds, the proceeds of the latter must be applied to retiring the circulation secured thereby. 18 Op. 493.

**28. Organization of national banks in Porto Rico.**—By virtue of section 14 of the act of April 12, 1900 (31 Stat. 80), the laws of the United States relative to the organization and powers of national banks were extended to Porto Rico. 23 Op. 169.

**29. Organization of national banks in Hawaii.**—The act of April 30, 1900 (31 Stat. 141), extended the national banking laws of the United States to the Territory of Hawaii, and

the Comptroller of the Currency is authorized to grant permission for the organization of national banks therein. 23 Op. 177.

**30. Same.**—Sections 5154 and 5155, Revised Statutes, do not apply to banks existing in Hawaii prior to the passage of the act of April 30, 1900, but refer exclusively to banks organized under special or general laws of a State. *Ib.*

**31. Establishment of national banks in Oklahoma.**—Under existing legislation [1889] relating to the establishment of national banking associations, and in the present condition of Oklahoma (being without a government and system of laws), such banking associations can not lawfully be authorized and established in the Territory known by that name. 19 Op. 315.

**32. Same.**—A national bank can not be lawfully established at Muskogee, a town in the territory of the Creek Nation. 19 Op. 342.

**33. Same.**—The effect of certain provisions in the treaties with the Creek Nation of Indians of August 28, 1856, and August 11, 1866, which render inoperative in the Creek territory the various national banking laws, considered. *Ib.*

**34. National banks may be established in the Indian Territory.**—In view of the provisions of the act of May 2, 1890 (26 Stat. 81), entitled "An act to provide a temporary government for the Territory of Oklahoma," etc.: *Advised* that there no longer exists any obstacle to the establishment of national banking associations in the Indian Territory. 19 Op. 585.

**35. The laws relating to national banking associations are, by virtue of the act of May 17, 1884 (23 Stat. 24), in force in the Territory of Alaska, and such associations may be lawfully organized in that Territory.** 19 Op. 678.

TAX ON CIRCULATION. *See* INTERNAL REVENUE, II, c.

### III. State Banks.

**36. The tax on State banks imposed by section 19 of the act of February 8, 1875 (18 Stat. 311), applies only to promissory notes and not to other negotiable or quasi negotiable paper.** 20 Op. 681.

The papers submitted are not notes within the meaning of that act. *Ib.*

**37.** An order on a State bank payable in merchandise silver bullion, which can not be used as money without danger of total loss to whoever may take it, is not subject to the tax imposed by sections 19 and 20 of the act of February 8, 1875 (18 Stat. 311). 21 Op. 336.

**38.** The use by State banks of the word "international" as a portion of their name or title is not in violation of section 5243, Revised Statutes. 22 Op. 475.

#### BATTERY ISLAND, MARYLAND.

Upon the facts presented touching the title to certain property at Battery Island, in the Susquehanna River, Maryland, occupied and used by the United States Fish Commission: *Advised* (1) that the legal title to such of the made land as is contiguous to the island is in the riparian proprietor; (2) that the legal title to such of the made land as is not contiguous to the island, but lies separate therefrom, is in the State of Maryland, also the title to the soil on which the public works (cribs, breakwaters, etc.) are constructed; (3) that the United States have no title to any land within the lines of said works or upon the island excepting the light-house site. 19 Op. 149.

#### BATTLE-SHIP CONTRACTS.

*See* NAVY, VII.

#### BERING SEA.

*See* CLAIMS, II; SEAL FISHERIES.

#### BERTHS.

*See* SHIPPING, III, a, 45.

#### BETHEL READING ROOM.

*See* RESERVATIONS AND PARKS, II, 36.

#### BIDS.

*See* CONTRACTS, I, b; EXECUTIVE DEPARTMENTS, IV; POSTAL SERVICE, III, b; ARMY, I, g; NAVY, I, f.

#### BILL IN EQUITY.

*See* EQUITY; CALIFORNIA DÉBRIS COMMISSION, 5.

#### BILLS AND NOTES.

*See* NEGOTIABLE INSTRUMENTS; INTERNAL REVENUE, II, f, 78-86.

#### BILLS OF LADING.

*See* INTERNAL REVENUE, II, f, 72-77.

#### BOARD, EXAMINATION OF HEAVY ORDNANCE.

APPROPRIATION. *See* ARMY, I, f.

#### BOARD OF CHARITIES FOR THE DISTRICT OF COLUMBIA.

*See* DISTRICT OF COLUMBIA, IV.

#### BOARD OF DESIGNATORS.

*See* STEAMBOAT-INSPECTION SERVICE.

#### BOARD OF GENERAL APPRAISERS.

*See* CUSTOMS LAWS, X.

#### BOARD OF INQUEST.

*See* NAVY, II, f, 110.

**BOARD OF SUPERVISING INSPECTORS OF STEAM VESSELS.**

See STEAMBOAT-INSPECTION SERVICE.

**BOARDS OF IMMIGRATION.**

See IMMIGRATION, II, d.

**BOATSWAINS.**

See NAVY, II, d, 89-91.

**BOND OF INDEMNITY.**

See UNITED STATES, IX, 107.

**BONDED WAREHOUSES.**

See CUSTOMS LAW, III, e.

**BONDS.**

I. Generally 1-8.

II. Official Bonds 9-19.

III. Other Bonds 20-23.

**I. Generally.**

1. **Redemption of continued fives of 1881.**—In calling for redemption the new bonds issued by the Secretary of the Treasury, known as "continued fives," those which have the highest number, i. e., "the bonds of each class last dated and numbered," as provided by the third section of the act of July 14, 1870 (16 Stat. 272), should be called first. 17 Op. 349.

2. **Purchase of United States bonds.**—The power given the Secretary of the Treasury by section 2 of the act of March 3, 1881 (21 Stat. 457), to purchase United States bonds with the surplus money in the Treasury not otherwise appropriated, does not include the payment of commissions to private parties to purchase for the Government. 19 Op. 279.

3. **Same.**—Only the market price of the bonds at the time of the purchase should be paid; no commissions in addition to the par value of the bond and the premium thereon can be lawfully paid. *Ib.*

4. **Same.**—The power conferred by the statute does not extend to the making of contracts for future delivery, but is limited to actual cash purchases. *Ib.* (281.)

5. A proposed issue of interest-bearing bonds by the county commissioners of Floyd County, Ga., will not conflict with the banking laws of the United States. 21 Op. 70.

6. Certain interest-bearing bonds of the State of Arkansas held not to bear interest after maturity. (*United States v. North Carolina*, 136 U. S. 211, followed.) 21 Op. 135.

7. As a recourse to law for the settlement or collection of certain bonds issued by certain States and owned by the United States would involve the grave act of suing a State, and as Congress has had this question before it repeatedly and has not directed such a course, the Secretary of the Treasury is advised not to institute suit. 21 Op. 478.

8. A bond is an obligation in writing and under seal, binding the obligor to pay a sum of money to the obligee. It is sometimes denominated a specialty, being under seal, as distinguished from a simple promise to pay not sealed. 22 Op. 368.

**II. Official Bonds.**

9. **Assistant treasurers—Form of bond.**—The form of the bond required to be given by assistant treasurers of the United States under section 3600, Revised Statutes—whether the parties thereto are to be jointly and severally, or may be only jointly bound, and whether each surety is to bind himself for the full amount of the penalty, or may restrict his liability to a less amount—is not made the subject of statutory regulation, but is left to the determination of the officers by whom the bond is to be approved. 18-274.

10. **Same.**—But the form ordinarily made use of in practice is that wherein the principal and sureties are jointly and severally bound for the full amount of the penalty. *Ib.*

11. **Same.**—This form being preferable to any other, and its use sanctioned by long practice, the adoption of a different form

(though it might not be inconsistent with the terms of the statute so to do) would not be warranted unless the circumstances of the particular case were such that the public interests could not otherwise be served. *Ib.* (275.)

12. The suspension of an officer involves a suspension of his bond; the bond required of the person designated to take the place of the former being substituted therefor while the person so designated is performing the duties of the office. 18 Op. 318.

13. The omission of the words "in the State of Vermont" from the official bond of the collector of customs for the district of Vermont does not impair its validity. The bond is valid, either under the statute or at common law. 18 Op. 458.

14. The Secretary of the Navy has power, under section 1383, Revised Statutes, to approve a pay-officer's bond in which the sureties are corporations, or a corporation joined with a natural person, if he deems such sureties sufficient. 19 Op. 175.

15. Pension agent's bond.—The provision in the act of June 30, 1890 (26 Stat. 187), "making appropriations for the payment of invalid and other pensions," etc., which requires a new bond "from all pension agents now in office," is mandatory, and applies to all pension agents then in office, without any exception whatever. 19 Op. 581.

16. The act authorizing the acceptance of bonds and undertakings of surety and fidelity companies (23 Stat. 279) does not permit the imposition of conditions and regulations by Government officials relative to the percentage of capital stock to liability on a single official bond, or the minimum rates to be charged for such insurance, etc. 22 Op. 421.

17. The five years' limitation, fixed by section 2 of the act of August 8, 1888 (25 Stat. 387), within which suits may be brought upon the official bonds of disbursing officers begins to run from the time the accounting officers of the Treasury make the statement of the account showing an indebtedness to the United States. 22 Op. 611.

18. Indian inspector's bond.—Although the general functions and duties of Indian inspectors do not include specifically the disbursement of public money, and these officers are not required by statute to give bond, yet the Secretary of the Interior may lawfully assign

to them duties relating to business concerning the Indians other than and in addition to those prescribed whenever the exigencies of the public service require it. 17 Op. 391.

19. Same.—Where the particular duty thus assigned to an inspector involves the receipt or disbursement of public money, it is competent for the Secretary to take a bond for the protection of the Government against loss, although such bond may not be required by statute; and the bond would be valid and binding upon both principal and sureties if voluntarily given by the officer. *Ib.*

See also DIPLOMATIC AND CONSULAR OFFICERS, 1, 3.

### III. Other Bonds.

20. Contractor's bond.—An erasure and interlineation in a bond increasing the amount of the penalty does not invalidate that instrument or impair its legal effect, if in fact it was made prior to its execution. 17 Op. 285.

21. Same.—The attestation of witnesses to a bond is merely for convenience of proof. The law does not require such witnesses, but it is expedient and safe always to require them. *Ib.*

22. Same.—If any material change is made in a bond subsequent to its execution, the instrument is thereby rendered void, unless it can clearly be shown that after the change the parties assented to it and still acknowledge the signing and sealing to be their act. *Ib.*

23. On contract—Certificate of sufficiency of bondsmen.—There is no law requiring a United States judge or a United States attorney to certify as to the sufficiency of guarantors or bondsmen offered in connection with proposals and contracts with the Navy Department, and no fees are chargeable against the Government for such service. 19 Op. 181.

24. Same.—The expense of obtaining a certificate from the officer must be borne by the bidder or contractor as other expenses are incurred by him in the proper execution of the papers. *Ib.*

25. A proposed bond of indemnity for advances made and to be made to a contractor for building a vessel, deemed ineffectual. Suggested that the contractor be required to execute a refunding bond with adequate per-

sonal or real security, or both, to cover as well advances heretofore made as any which may be made hereafter. 20 Op. 692.

**26. Bond of agent making entry.**—Section 2787, Revised Statutes, requires collectors of customs to take from an agent or person other than the owner making an entry of imported merchandise a bond in the penal sum of \$1,000, with condition that the actual owner or consignee of the merchandise shall deliver a full and correct account thereof according to the terms and specifications of that section. 25 Op. 66.

**27. Same.**—General bonds of sufficiently large an amount may, in special cases, be lawfully accepted by collectors of customs, in lieu of the special bonds of \$1,000 each required by section 2787, Revised Statutes, from agents making entries of imported merchandise for others, requiring them to produce the declaration of the owner in every case where goods may thereafter be imported without the same during a specified period. 25 Op. 177.

**28. Exportation bond—Failure to withdraw.**—Where the holders of distilled spirits, bonded for exportation, shall have failed within theseven months specified in the bond (given under the regulations of internal revenue circular No. 282) to withdraw such spirits in fact from the distillery warehouse, a forfeiture of the bond follows, and the spirits are not protected from the domestic tax. 18 Op. 246.

**29. Extension of time.**—Upon application of the principal and sureties on such bond, and for good cause shown, the Commissioner of Internal Revenue may, under existing regulations, extend the time named in the bond beyond seven months. *Ib.*

**30. Distraint.**—The spirits covered by an exportation bond, after the failure to withdraw them and after the forfeiture of the bond, are liable to distraint under the act of May 28, 1880 (21 Stat. 145). *Ib.*

**31. Same.**—The condition of the bond having been broken by the failure to withdraw the spirits, the Government may also proceed upon the bond. *Ib.*

**32. Bonds provided for in a mortgage, to be issued or not as the future action of the mortgagor may determine,** are not under Schedule A of the war-revenue act of 1898 (30 Stat. 458), until issued the subject of taxation

or an element in estimating the amount of stamps required for the mortgage. 22 Op. 531.

**33. Same.**—A bond, though prepared and signed, which is still in the possession of the obligor unissued, and which may never be issued, is not a debt or obligation which is liable to taxation under that law. *Ib.*

See also CONTRACTS, 46-56, 132, 134; SURETY.

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### BOUNDARY.

See INDIANS, II, a, 36; HOSPITAL POINT LIGHT STATION.

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### BOUNTY.

**1. Sugar produced within the United States** between March 31, and July 1, 1891, is not entitled to the bounty provided by paragraph 231 of the act of October 1, 1890. (26 Stat. 583.) 20 Op. 2.

**2. Same—Issuance of licenses.**—The Commissioner of Internal Revenue is not authorized to issue, prior to April 1, 1891, the licenses provided for by paragraph 233 of that act, to persons desiring to avail themselves of the provisions of the statute. *Ib.*

See NAVY, 6; PRIZE, 4.

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### BOUNTY LAND WARRANTS.

See PUBLIC LANDS, XV, 65.

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### BOYSEN, ASMUS.

See INDIANS, III, c, 84-87.

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### BOWMAN ACT.

(Act of March 3, 1883, 22 Stat. 485.)

See CLAIMS, I, g, 60; COURTS, I, d, 31.

**BREAKAGE.**

*See* CUSTOMS LAW, III, d.

**BREVET COMMISSIONS.**

*See* ARMY, II, a, 40–42.

**BREVET BANK.**

*See* ARMY, II, d, 152.

**BRIDGES.**

1. **Secretary of War—Power to grant revocable license—Rock Island Bridge.**—The Secretary of War has no authority under existing legislation to grant a revocable license to the Davenport and Suburban Street Railway Company, or to any other street railway company, to use jointly with the Tri-City Railway Company the lower portion of the Government bridge across the Mississippi River, connecting the cities of Rock Island, Ill., and Davenport, Iowa. 25 Op. 389.

2. **Suggested,** That since the question is not free from doubt, such permission might be granted in order that the matter may be brought before the courts for judicial determination. *Ib.*

*See also* NAVIGABLE WATERS, III, a.

**BRIG "GENERAL ARMSTRONG."**

*See* CLAIMS, I, b, 13–28.

**BRIG "MARY C. COMERY."**

*See* DIPLOMATIC AND CONSULAR OFFICERS, II, 18.

**BRITISH VESSELS.**

*See* GUAM, 4.

**BRUNSWICK HARBOR, GEORGIA.**

*See* NAVIGABLE WATERS, II, c, 104–106.

**BUILDING REGULATIONS.**

*See* DISTRICT OF COLUMBIA, II, 3, 4.

**BULLION.**

*See* TREASURY DEPARTMENT, V.

**BUREAU OF AMERICAN REPUBLICS.**

1. **Appointment of Director.**—The Secretary of State of the United States is authorized to appoint the Director of the Bureau of American Republics without the assent of the other countries contributing to the support of the Bureau, and to remove such Director and appoint another in his place without such assent. 20 Op. 558.

2. **The Monthly Bulletin,** containing advertisements of private firms or corporations, published by the Bureau of American Republics, is entitled to transmission through the mails free of postage, under the act of February 20, 1897. 21 Op. 514.

**BUREAU OF ANIMAL INDUSTRY.**

ORDER No. 124. *See* DEPARTMENT OF AGRICULTURE, VIII, 60.

**BUREAU OF ENGRAVING AND PRINTING.**

*See* PUBLIC PRINTING, III.

**BUREAU OF YARDS AND DOCKS.**

CHIEF OF. *See* NAVY DEPARTMENT, III, 31.

## BURNETT, GEN. WARD B.

PENSION CASE. See PENSIONS, II, e.

## CABLES.

1. Landing of foreign cables in United States.—No one has a right to land a foreign cable upon our shores and establish a physical connection between our territory and that of a foreign state without the consent of the Government. 22 Op. 13.

2. Same.—The President has the power, in the absence of legislation by Congress, to control the landing of foreign submarine cables on the shores of the United States. He may either prevent the landing, if the rights intrusted to his care so demand, or permit it on conditions which will protect the interests of this Government and its citizens. *Ib.*

3. Same.—The Executive permission to land a cable is subject to subsequent Congressional action. *Ib.*

4. Same.—If a landing has been effected without the consent or against the protest of this Government, respect for its rights and compliance with its terms may be enforced by applying the prohibition to the operation of the line, unless the necessary conditions are accepted and observed. *Ib.*

5. The grounding of a cable upon the soil of the United States, with the intention of connecting our territory with foreign territory by that means, is a matter which is under the sovereign control of the Government, such control to be exercised by Congress, provided it legislates upon the subject, and, in the absence of such legislation, to be regulated and controlled by the Executive Department of the Government. 22 Op. 408.

6. Same.—The application of the Commercial Cable Company for leave to land its cable in the United States is within the jurisdiction and control of the Department of State, acting for the President. *Ib.*

7. Same.—So far as the landing of a cable in the island of Cuba is concerned, the subject is under the control of the War Department, by reason of the fact that its occupation by the United States is of a military nature. *Ib.*

8. Same.—Owing to the temporary nature of the occupation of the island of Cuba by

the United States, it is inexpedient to grant permission to the Commercial Cable Company to land a cable upon the soil of Cuba. *Ib.*

9. The grounding of a cable upon the soil of the United States, with the intention of connecting our territory with foreign territory by that means, is a matter which is under the sovereign control of the Government, to be exercised by Congress, but in the absence of Congressional action to be regulated and controlled by the Executive Department of the Government. 22 Op. 514.

10. Same.—The grounding of a cable upon the island of Cuba to connect it with a foreign country can not be done and maintained in opposition to the law of the Government which exercises sovereign power in the island. *Ib.*

11. Same.—The authorities of the United States have full power, in their discretion, to prevent by all necessary means the grounding of a cable in Cuba intended to connect that island with the United States or with any other country. *Ib.*

12. Same.—The Secretary of War is justified in using force to remove or disrupt any such cable which may be laid in disregard of his instructions and against his will. *Ib.*

13. Spanish cable concessions—Cuba—The Philippines.—The concessions secured from Spain by English telegraph companies in Cuba and the Philippines are not binding, as contracts, on the United States, Cuba, the Philippines, or other government replacing Spain; but as to the Philippine cables it does not follow from this fact that no obligation whatever exists. 23 Op. 195.

14. Same—Interisland cables—Equitable obligation.—There is an equitable obligation on the part of the four islands connected by cables, and on the part of the archipelago as a whole, with regard to the concession for interisland cables in the Philippines, which concession provides for an annual subsidy. *Ib.*

15. Same—Monopoly for a certain number of years.—With regard to two other concessions for cables, from Bolinao to Manila and from Bolinao to Hongkong, which do not call for pecuniary subsidies, but for a monopoly during a certain number of years, the equitable obligation upon the islands concerned and upon the archipelago, though less obvious, exists. *Ib.*

16. **Same—Obligation of the United States.**—It is for Congress to determine whether any such obligation exists on the part of the United States. *Ib.*

17. **Same—Disposition of the question—Philippine cables.**—In the absence of any urgent reason for Executive action the whole matter of these equitable liabilities concerning the Philippine cables ought to be left to Congress or to the permanent Philippine government. *Ib.*

18. **Same—Similar concessions in Cuba.**—The foreign and purely temporary character of the occupation of Cuba by the United States makes it highly proper for the latter to leave the question of Cuba's equitable liability in regard to similar concessions to the permanent government of Cuba to determine. *Ib.*

19. There is no objection to the submission to Congress of the claim of the British Cuba Submarine Telegraph Company for damages by our vessels occurring during the hostilities with Spain. 22 Op. 654.

20. There is no ground to support the claim for indemnity of the British Eastern Extension Australasia and China Telegraph Company for cutting the cable at Manila during the war with Spain. 22 Op. 315.

21. **Same.**—Property of a neutral permanently situated within the territory of an enemy is from its situation, liable to damage from the lawful operations of war, and no compensation is due for such damage. *Ib.*

#### CABRAS ISLAND.

1. **Title to.**—The facts contained in a certificate of the record issued by the registrar of property at Humacao are sufficient evidence that the United States will, upon the purchase thereof, acquire from the grantors a good and unencumbered title to Cabras Island, Porto Rico. 25 Op. 226.

2. **The conveyance** should be to the "United States of America" instead of to the "Department of Light-Houses of the United States." *Ib.*

#### CADETS.

See MILITARY ACADEMY; NAVAL ACADEMY; AND NAVY. *IV*, 159-169.

#### CALIFORNIA DÉBRIS COMMISSION.

1. The members of the California Débris Commission, established by the act of March 1, 1893 (27 Stat. 507), do not hold civil office within the meaning of the Revised Statutes, section 1222, nor does Revised Statutes, section 1224, necessitate their withdrawal from the Engineer Corps. 20 Op. 604.

2. The North Bloomfield Gravel Mining Company, of California, is within the jurisdiction of the California Débris Commission. (53 Fed. Rep. 625, considered.) 21 Op. 62.

3. **Same.**—Resort may be had to a court of equity to compel allowance of inspection of premises where hydraulic mining is being, or is supposed to be, unlawfully conducted. *Ib.*

4. **Hydraulic mining.**—The California Débris Commission is authorized under section 19 of the act of March 1, 1893 (27 Stat. 509), to take necessary steps to prevent injury to the navigability of the Sacramento River by the operations of a certain company engaged in hydraulic mining. 21 Op. 10.

5. **Same.**—The provisions of the above-named act may be enforced by an injunction, to be obtained from one of the judges of the Federal courts in California on a bill in equity, brought by the district attorney in the name of the United States. *Ib.*

6. **Same.**—The superior court of Sutter County, Cal., granted a temporary injunction on a suit by the county of Sutter, restraining the Red Dog Mining Company, which was operating under a license from the California Débris Commission, from mining by the hydraulic process: *Held*, in the absence of any question touching the validity of the powers granted to the California Débris Commission, which was created by the act of March 1, 1893 (27 Stat. 507), the Government should not intervene in the suit. 22 Op. 554.

#### CALIFORNIA STATE HARBOR COMMISSIONERS.

See STATE TAX, 3-6.

#### CALAIS NATIONAL BANK.

See 21 Op. 558.



**CALL.**

*See* INTERNAL REVENUE, 110.

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**CALLED BONDS.**

*See* BANKS, 27.

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**CANAL ZONE.**

*See* PANAMA.

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**CANALS.**

1. The War Department having given its consent and approval to the dredging of a canal which is wholly within the State of Texas, there is no reason why such permission should be withdrawn. 22 Op. 332.

2. Canals being artificial waterways or means of commercial transportation, as well as natural lakes and rivers, the same principles may be applied to them that are applied to bridges, turnpikes, streets, and railroads. *Ib.*

*See also* NAVIGABLE WATERS, I, c; PANAMA.

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**CANCELLATION.**

OF PREEMPTION OR HOMESTEAD ENTRY. *See* PUBLIC LANDS, V, 15.

OF POSTAGE STAMPS. *See* POSTAL SERVICE, V, 130.

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**CANNED MEAT.**

*See* FOOD PRODUCTS, 8, 9.

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**CANTEEN.**

*See* ARMY, I, e.

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**CASTLE GARDEN.**

*See* IMMIGRATION, I, 19.

**CARTAGE.**

*See* CONTRACTS, IX, 163; CUSTOMS LAW, X, 459.

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**CARTER, CAPT. OBERLIN M.**

*See* COURTS-MARTIAL, IV, 27-29.

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**CASS LAKE INDIAN RESERVATION.**

*See* INDIANS, VIII.

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**CATTLE.**

*See* DEPARTMENT OF AGRICULTURE, VIII.

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**CAVEAT.**

*See* PATENTS, 1, 2.

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**CENSUS OFFICE.**

*See* DEPARTMENT OF THE INTERIOR, III, e; and DEPARTMENT OF COMMERCE AND LABOR, III, 26-34.

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**CERTIFICATE OF MERIT.**

1. **Enlisted man—Military service.**—The President may grant a certificate of merit to an enlisted man of the Army who has distinguished himself in the service and is recommended for such certificate by the commanding officer of his regiment or by the chief of the corps to which he belongs, notwithstanding the fact that he is not in the military service at the time his case reaches the President for consideration, and, if granted the certificate, will be entitled to additional pay for the period intervening between the date of such service and the date of his discharge from the military service; but the President can not grant a certificate of merit if the recommendation therefor by the commanding officer or chief of his corps was made after the enlisted man was discharged from the military service. 24 Op. 127.

2. **Enlisted men of the Marine Corps.**—Section 1216, Revised Statutes, as amended (act of March 29, 1892, 27 Stat. 12), which empowers the President to grant a certificate of merit to an enlisted man of the Army who has distinguished himself in the service and has been recommended therefor by the commanding officer of the regiment or the chief of the corps to which such man belongs, applies only to enlisted men of the Army, and not to members of the United States Marine Corps who have been similarly commended. 24 Op. 579.

*See also* MEDALS; and LIFE SAVING.

#### CERTIFICATES.

**OF ELIGIBILITY.** *See* ARMY, I, c, 21, 22.

**OF INDEBTEDNESS.** *See* INDIANS, V, e.

**INCIDENT TO ENTRY AND REENTRY.** *See* CHINESE, II.

**OF NATURALIZATION.** *See* CITIZENSHIP, 8.

**OF RESIDENCE.** *See* CIVIL SERVICE, III, a, 65-68.

**REINSTATEMENT.** *See* CIVIL SERVICE, III, c, f (97).

#### CERTIFICATION.

*See* CIVIL SERVICE, III, c; V, 125-127; PUBLIC LANDS, III; BANKS, II, 19-20.

#### CERTIORARI.

*See* CUSTOMS LAW, XI, 473.

#### CESSIONS OF JURISDICTION.

*See* UNITED STATES, V; PUBLIC BUILDINGS, 38-40.

#### CHAPLAINS.

**PAY OF.** *See* ARMY, II, d, 157.

#### CHARTER PARTIES.

*See* INTERNAL REVENUE, II, f (4).

#### CHARWIN LAND GRANT.

*See* PUBLIC LANDS, IV, 9.

#### CHARGES.

**COPY OF CHARGES.** *See* NAVY, V, 170, 171.

**CHARGES FOR PREPARING AND PACKING.** *See* CUSTOMS LAW, IV, a, 181-182.

*See also* COVERINGS.

#### CHEROKEE INDIANS.

**CITIZENSHIP.** *See* INDIANS, I, c, 21, 22.

**LEASE OF LANDS.** *See* INDIANS, III, e, 100.

**MINERAL LANDS.** *See* INDIANS, III, e, 102-104.

**ASSIGNMENT OF INDEBTEDNESS OF THE UNITED STATES.** *See* INDIANS, V, d, 152.

**EXPORT TAX ON HAY.** *See* INDIANS, VI, 161, 162.

#### CHEROKEE STRIP.

*See* INDIANS, III, e, 97.

#### CHECKS.

*See* NEGOTIABLE INSTRUMENTS; INTERNAL REVENUE, II, b, 23, 15, 16.

#### CHICAGO HARBOR.

*See* NAVIGABLE WATERS, II, c, 94.

#### CHICAGO RIVER.

*See* NAVIGABLE WATERS, II, b, 79-82.

#### CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY.

**REPAIRS TO ROCK ISLAND BRIDGE.** *See* NAVIGABLE WATERS, III, a, 137-139.

**CHICKAMAUGA AND CHATTANOOGA MILITARY PARKS.**

See RESERVATIONS AND PARKS, III, 29, 30.

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**CHIEF ENGINEERS.**

See NAVY, IV.

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**CHIEF OF ENGINEERS.**

See ARMY, V.

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**CHIEF OF RECORD AND PENSION DIVISION.**

See WAR DEPARTMENT, III.

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**CHIEF OFFICER OF CUSTOMS.**

See CUSTOMS LAW, IX, h, 442-444.

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**CHIEF VALUE.**

See CUSTOMS LAW, III, b, 82; IV, a, 171, 172; IV, d, 278, 281.

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**CHILEAN COMMISSION.**

There is nothing in the treaty concluded by Chile and the United States on August 7, 1892, or in the appropriation for carrying it into effect, which prevents the President from requiring service under the treaty from the **American secretary or agent** or from making compensation therefor at any time before the organization of that commission. 20 Op. 595.

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**CHINA.**

The appropriation act of 1891 (26 Stat. 1061) does not authorize the expenditure of any money for a **prison house in China** except at Shanghai. 20 Op. 391.

MILITARY SUPPLIES. See NEUTRALITY, 17.

**CHINESE.****I. Chinese Exclusion Laws and Treaties.**

- a. *Construction and Operation in General*, 1-14.
- b. *Effect of Treaties with China*, 15-23.
- c. *Enforcement*, 24-32.

See also V.

**II. Requirements Incident to Entry or Reentry.**

- a. *In General*, 33-44.
- b. *Certificates of Identification*, 45-63.
- c. *Return Certificates—Certificates of Residence*, 64-67.
- d. *Certificates of Disability*, 68-69.

**III. Chinese Persons Entitled to Enter or Reenter, etc., 70-94.****IV. Chinese Persons Excluded, 95-113.****V. Expulsion and Deportation—Detention, 114-120.****VI. Citizenship of, 121-132.****VII. Appeal, 133.****I. Chinese Exclusion Laws and Treaties.**

- a. *Construction and Operation in General.*

1. The requirements of section 6 of the act of July 5, 1884 (23 Stat. 116), with reference to certificates for admission of Chinese to this country should be strictly complied with by applicants for admission. 21 Op. 6.

2. Laws applicable to Chinese applying for admission to Hawaii.—The restrictions placed upon the admission to the United States of Chinese persons of the exempt class, and the regulations affecting the departure and return to this country of registered Chinese laborers, are to be held applicable to Chinese persons applying for admission to the Hawaiian Islands or to such persons residing there who may wish to depart with the intention of returning (par. 8 of the resolution of July 7, 1898, 30 Stat. 751). 22 Op. 249.

3. The policy of the Government being against the admission of Chinese laborers, treaty provisions making exceptions should not be extended by construction to cases not falling within the plain scope of the language used. 21 Op. 425.

4. The true theory of the Federal law is not that all Chinese persons may enter this country who are not forbidden, but that only

those are entitled to enter who are expressly allowed. 22 Op. 130; 23 Op. 485.

5. Chinese applicants for admission to the United States should comply strictly with the requirements of the law as to certificates, and the omission of any of the statutory requirements is fatal. *Ib.*

6. The facts which entitle a Chinese laborer to return to this country must exist not only at the time of his departure but also at the time of his return, and this notwithstanding the fact that he has obtained a return certificate. 24 Op. 91.

7. Transfer of Chinese crew in port of the United States.—A Chinese crew which shipped at Hongkong on a vessel belonging to a company chartered under the laws of the United States, for a trip to San Francisco and return by the same vessel or any other vessel belonging to that company, which crew, owing to an accident to the ship, was brought to San Francisco on a vessel belonging to a different company, may be transferred to another vessel substituted for the one injured, after having duly signed for that service before a United States shipping commissioner. 24 Op. 111.

8. Same.—The landing of the crew, temporarily, for the purpose of transfer, would not violate the treaty with China and the laws of the United States in relation to the exclusion of Chinese. *Ib.*

9. Transfer of Chinese crew within port of United States.—The Chinese exclusion laws and the alien contract labor laws have no application to seamen who in good faith are engaged in navigation, and who are temporarily within a port of the United States for that purpose. The transfer of the Chinese crew of the Danish steamer *Arab* to the Danish steamer *Stanley Dollar*, and of a Chinese crew from a vessel of the Pacific Mail Steamship Line to the steamer *Siberia*, of the same line, within a port of the United States, would not involve a violation of either of those laws. 24 Op. 553.

10. Transshipment in port of the United States—Head Tax.—The mere transfer from one vessel to another in a port of the United States, of alien Chinese passengers en route to their destination in a foreign country, does not subject such persons to the payment of the "head tax" or duty prescribed by section 1 of the act of August 3, 1882 (22 Stat.

214), as amended by the act of August 18, 1894 (28 Stat. 391). 24 Op. 590.

11. The act of April 29, 1902 (32 Stat. 176), extending the provisions of the Chinese exclusion laws, and expressly reenacting section 7 of the act of September 13, 1888 (25 Stat. 477), continued existing laws only "so far as the same are not inconsistent with treaty obligations." 24 Op. 544.

12. An open book account of over \$1,000 of a registered Chinese laborer seeking to return to this country, with a Chinese debtor, the existence of which account has been established, is one "pending settlement" under Article II of the treaty with China of December 8, 1894 (28 Stat. 1210), and is one "unascertained and unsettled" within the meaning of section 6 of the act of September 13, 1888 (25 Stat. 476). 24 Op. 637.

13. The term "pending settlement" may mean more than "pending payment;" it may include ascertainment. The word "settlement" in legal use embraces both ideas—the idea of discharging an obligation by payment and the idea of arriving at its amount by ascertainment and adjustment.

14. Immigration act of 1903 not a repeal of Chinese exclusion laws.—The object of the proviso in section 36 of the immigration act of March 3, 1903 (32 Stat. 1221), providing that that act should not be construed to repeal, alter, or amend existing laws relating to the immigration or exclusion of Chinese, was to prevent a misinterpretation of the repealing clause in that section and to forestall any attempt to secure the admission of Chinese theretofore prohibited from entering the United States under a claim that this act was intended to contain all provisions regulating the immigration of aliens, and that it expressly repealed the Chinese exclusion laws. 24 Op. 706.

#### b. *Effect of Treaties with China.*

15. The convention of March 17, 1894 (28 Stat. 1210), between the United States and China did not repeal any prior legislation except the act approved October 1, 1888 (25 Stat. 504). 21 Op. 68.

16. Treaty of 1894—Admission of Chinese subjects resident at Hongkong.—The treaty of 1894 with China so modifies the requirements of section 6 of the act of July 5, 1884 (23 Stat. 116), that Chinese subjects resident

at the British colony of Hongkong, and belonging to one of the privileged classes, may now be admitted to the United States upon a certificate signed by the proper representative of the Colonial Government. 21 Op. 347.

17. The phrase "Chinese consul at the port of departure" used in Article II of the convention of 1894 between the United States and China, means the consul who represents the Chinese Government at the place where the laborer leaves the United States. 21 Op. 357.

18. The words "port" and "land," used in said treaty, do not limit the right to return to such Chinese as travel by sea. *Ib.*

19. Article II of the treaty of 1894—Certificate of disability—As heretofore held by this Department (21 Op. 357; 23 Op. 545), Article II of the treaty with China of 1894 displaced the provisions of section 7 of the act of 1888 with regard to the certificate of disability which must be presented by a registered Chinese laborer returning to the United States after an absence of more than one year. 24 Op. 544.

20. The expiration of the treaty of December 8, 1894, with China will in no way affect the validity of the laws now in force relating to Chinese immigration. 25 Op. 137.

21. Same.—The act of April 29, 1902 (32 Stat. 176), reenacting, extending, and continuing in force for a period of ten years all laws relating to the exclusion of Chinese not inconsistent with treaty obligations, must be construed with reference to treaty obligations existing between the United States and China at that time, and not with reference to treaty obligations which may exist at a future time. So construed, only such laws as were in conflict with treaty obligations at the time of its passage, were not reenacted or extended. *Ib.*

22. Same.—The treaty with China of 1868, as amended by the treaty of 1880, was in part suspended by the terms of the treaty of 1894 for a period of ten years, at the end of which time (China having given notice of its final termination) the treaty obligations between the United States and that Empire will be the same as they were immediately before the taking effect of that treaty. *Ib.*

23. Same.—Only such obligations as arose out of the treaties with China were referred to by the language used in the act of April 29, 1902. *Ib.*

### c. Enforcement.

24. Agents appointed by Secretary of the Treasury to aid in enforcement.—Section 2 of the act of April 29, 1902 (32 Stat. 176), which empowers the Secretary of the Treasury, with the approval of the President, to appoint such agents as he may deem necessary for the efficient execution of the Chinese treaty and Chinese exclusion laws, does not repeal by implication the provisions of the various previous acts in relation to the exclusion of Chinese, vesting in the collector of customs and his deputies the power to enforce the provisions of those laws, but is to be regarded as additional legislation on the subject and in harmony therewith. 24 Op. 561.

25. Same.—The agents to be appointed by the Secretary of the Treasury under the above-named act are not to supersede the collectors in the performance of their duties regarding the admission of Chinese, but constitute an additional force to act in cooperation with them in securing an effective enforcement of the law. *Ib.*

26. Jurisdiction of United States commissioners.—In the hearing of cases arising under the Chinese exclusion laws, the duties of a United States commissioner are judicial rather than ministerial. Consequently the Treasury Department has no authority to issue instructions to United States commissioners as officers charged with the enforcement of these laws. 23 Op. 40.

27. The question of the validity of a proposed regulation of the Treasury Department providing that in case a Chinese laborer who has left the United States upon a valid return certificate is delayed beyond one year from the date of his departure by reason of sickness or other disability beyond his control, the consular representative of the United States shall certify to such facts before the Chinaman shall be admitted into this country, not being a question actually or presently arising in the administration of the Treasury Department, the Attorney-General declines to express his opinion thereon. 23 Op. 582.

28. Circular No. 52, Bureau of Immigration, Treasury Department, issued May 10, 1902, providing that duly registered Chinese laborers seeking admission to the United States after temporary absence under Article II of the treaty of 1894 between the United States

and China must prove that some one of the conditions mentioned in that article exists at the time of application for readmission, is warranted both by the treaty with China and by the existing laws of the United States. 24 Op. 91.

29. The facts which entitle such Chinese laborer to return to this country must exist not only at the time of his departure but also at the time of his return, and this notwithstanding the fact that he has obtained a return certificate. *Ib.*

30. Certificates issued to Chinese persons of the exempted class by the Chinese consul at Havana, in the absence of certification by a consular officer of the United States, should not be accepted by the customs officials of the United States. 22 Op. 72.

31. The return entry of such Chinese is allowed only upon strict compliance with the terms of the treaty and the regulations formed thereunder. *Ib.*

32. Chinese certificates viséed by the British consul at Havana during the absence of the United States consular officers may be accepted by the authorities of the United States, provided this duty is performed in accordance with the requirements of the laws of the United States and the regulations thereunder. *Ib.*

DEPORTATION. See CHINESE, V.

## II. Requirements Incident to Entry or Reentry.

### a. In General.

33. Proof that applicant is merchant.—The provisions of the third paragraph of section 2 of act of November 3, 1893 (28 Stat. 7), requiring proof of an applicant for readmission that he actually conducted a business as merchant, are to be regarded as merely prospective in their operation and as applying exclusively to Chinese merchants who both come into the United States for the first time since November 3, 1893, and having carried on business here, afterwards leave the country and seek to return. 21 Op. 21.

34. Merchants already here when the statute took effect may leave the country and return as if the act of November 3, 1893, had not been passed. *Ib.*

35. At what port may return.—Regulations of the Treasury Department.—The Secretary of

the Treasury has authority to issue regulations requiring Chinese laborers residing in the United States, and who may depart therefrom for temporary sojourn abroad, to return to this country only at the ports from which they depart. 21 Op. 68.

36. From what ports Chinese may leave, and at what ports return.—Chinese laborers desiring to return to the United States should leave this country at a place which is a port and within the jurisdiction of a Chinese consul, and should return to it at a port of entry where there is a collector; but as they have the right to go and return by land, these places need not be seaports. 21 Op. 357.

37. Same.—The phrase "Chinese consul at the port of departure" used in Article II of the convention of 1894 between the United States and China, means the consul who represents the Chinese Government at the place where the laborer leaves the United States. 21 Op. 357.

38. A Chinese laborer who proposes to leave the United States and return, complies with the conditions necessary to demand a certificate if he file the required papers "with the collector of customs of the district from which he departs." Any rule directing him to file such papers with the collector of any other district imposes a condition not warranted by the treaty. 21 Op. 424.

39. The certificate of a United States commissioner states that a Chinaman charged with unlawfully coming within the United States, after a full hearing, was adjudged to have the lawful right to remain in the United States, and was accordingly discharged, it appearing that he is a citizen of the United States: *Held*, that certificates of this character should not be accepted as sufficient evidence of the right of the holders to enter this country. 21 Op. 581.

40. An open book account of over \$1,000 of a registered Chinese laborer seeking to return to this country, with a Chinese debtor, the existence of which account has been established, is one "pending settlement" under Article II of the treaty with China of December 8, 1894 (28 Stat. 1210), and is one "uncertained and unsettled" within the meaning of section 6 of the act of September 13, 1888 (25 Stat. 476). 24 Op. 637.

41. The term "pending settlement" may mean more than "pending payment;" it may include ascertainment. The word "set-

tlement" in legal use embraces both ideas—the idea of discharging an obligation by payment, and the idea of arriving at its amount by ascertainment and adjustment. *Ib.*

**42. Returning Chinese laborer.**—The "additional period."—The "additional period" of one year provided by Article II of the convention of December 8, 1894, between the United States and China (28 Stat. 1210) beyond the period in which a registered Chinese laborer is required to return to this country, is only for such time as the disability therein mentioned continues, the extreme limit of such extension under any circumstances being one year. 25 Op. 48.

**43.** The facts which entitle such Chinese laborer to return to this country must exist not only at the time of his departure, but also at the time of his return, and this notwithstanding the fact that he has obtained a return certificate. 24 Op. 91.

**44. Circular No. 52, Bureau of Immigration, Treasury Department,** issued May 10, 1902, providing that duly registered Chinese laborers seeking admission to the United States after temporary absence under Article II of the treaty of 1894 between the United States and China, must prove that some one of the conditions mentioned in that article exists at the time of application for readmission, is warranted both by the treaty with China and by the existing laws of the United States. *Ib.*

*b. Certificate of Identification.*

**45. Certificates of identification.**—Necessity.—The certificate of identification required of Chinese by section 6 of the act of July 5, 1884 (23 Stat. 116), in order to establish a right to land in the United States, can not be dispensed with. It is the sole evidence admissible to establish such right. 19 Op. 510.

**46. Same.**—The wife of a Chinese merchant residing in the United States must produce the certificate required by section 6 of the act of 1884 (23 Stat. 116) before being allowed to enter this country for the purpose of joining her husband. 22 Op. 260.

**47. Same.**—The status of such wife does not extend so far as to confer upon her an immunity from the certificate requirement to which the husband is entitled because of his acquired domicile here. *Ib.*

**48.** A certificate of naturalization issued to a Chinese person by the circuit court of the

district of Montreal, Canada, and a passport issued by the Governor-General of Canada, upon which the right is claimed as a merchant to enter into and travel through the United States, can not be accepted as a substitute for the certificate of identification prescribed by section 6 of the act of July 5, 1884 (23 Stat. 116). 21 Op. 123.

**49. Same.**—Sufficiency.—It is not sufficient that the information required to be in the certificate for admission should be supplied by the consular visé alone. The statute requires the guaranty of the certificate as well as the visé upon each point. 21 Op. 6.

**50. Same.**—The requirements of section 6 of the act of July 5, 1884 (23 Stat. 116) with reference to certificates for admission should be strictly complied with by Chinese applicants for admission. *Ib.*

**51. Same.**—The Secretary of the Treasury has power to require the production of a certificate for admission in such form as he may prescribe, as evidence of the right of certain Chinese subjects to enter the United States. 21 Op. 68.

**52. Same.**—The omission of any of the statutory requirements from a certificate for admission under the Chinese exclusion laws is fatal. 22 Op. 130, 131.

**53. Same.**—Chinese applicants for admission to the United States should comply strictly with the requirements as to certificates. *Ib.*

**54. Same.**—By whom issued.—Certificates of identification presented by Chinese persons as evidence of their right to enter this country for the first time, conformably to the provisions of section 6 of the act of July 5, 1884 (23 Stat. 116), signed by a Chinese consul-general within the United States, are not entitled to be treated as made by the Chinese Government within the meaning of the said act, notwithstanding the fact that the Chinese minister had by letter communicated to the Secretary of State the information that his Government had "authorized the consuls of China in foreign countries to issue" such certificates. 21 Op. 481.

**55. Same.**—The original entry certificates of Chinese merchants and others exempted under the Chinese exclusion laws must be issued by their Government or the government where they last reside. 22 Op. 72.

**56. Same.**—Chinese subjects of the permitted classes coming to the United States from China

must produce the certificate of the Government of China, and coming from other foreign countries in which they are residents, must now produce, under the treaty of 1894, the certificate of the government of such countries, and not, as under the act of 1884 (23 Stat. 116), the certificate of consular or other proper officials of China. 22 Op. 201.

57. *Same.*—Consular officers of China in foreign countries have not, therefore, since the treaty of 1894, the right to issue the certificates prescribed by section 6 of the above-named act. *Ib.*

58. *Same.*—Consular officers of China stationed in foreign countries, being duly empowered by the Chinese Government, may properly issue the certificates of identification required by section 6 of the act of July 5, 1884 (23 Stat. 116), and such certificates duly issued and accurately conforming to the requirements of section 6, are the certificates contemplated by the law. 20 Op. 693.

59. *Same.*—Chinese subjects resident at the British Colony of Hongkong desiring admittance to the United States under the provisions of the treaty of 1894 with China, may now be admitted to the United States upon a certificate signed by the proper representative of the Colonial Government. 21 Op. 347.

60. *Same.*—Chinese certificates viséed by the British consul at Havana during the absence of the United States consular officers may be accepted by the authorities of the United States, provided this duty is performed in accordance with the requirements of the laws of the United States and the regulations thereunder. 22 Op. 72.

61. *Same.*—Certificates issued to Chinese persons of the exempted class by the Chinese consul at Havana in the absence of certification by a consular officer of the United States should not be accepted by the customs officials of the United States. *Ib.*

62. *Same.*—Certain Chinese subjects presenting certificates in the Chinese language issued by the authorized representative of the Chinese Government, plainly stating the character and nature of their business, but not stating it in the English translation of the certificates accompanying the same, are not entitled to land in this country, section 6, of the act of July 5, 1884 (23 Stat. 116), providing that such certificates shall be in English

and contain the information described. 22 Op. 608.

63. *Same.*—Applicants for admission to the United States should comply strictly with the requirements of the act of 1884 with reference to the form and contents of entrance certificates. *Ib.*

*c. Return Certificates—Certificates of Residence.*

64. *Return certificates.*—The Treasury Department has no authority to direct the admission of Chinese laborers who fail to obtain before departure from this country the certificate required by Article II of the treaty of 1894 (28 Stat. 1210) with China, although they have complied with all the requirements affecting Chinese who leave the United States, except the procuring of this certificate. 21 Op. 424.

65. *Same.*—The intent of Article II of the treaty with China was that each Chinaman should, before leaving the United States, receive from the collector a certificate of his right to return, in order to entitle him to do so. 21 Op. 425.

66. *Same.*—The return certificate of Chinese persons entitled to return to the United States under the contingency contemplated by Article II of the treaty of 1894 with China must be accompanied by a certificate as to the facts, made by the Chinese consul at the port of departure for return to the United States. 22 Op. 72.

67. *Same.*—Certificate of residence.—A Chinese person possessing a "certificate of residence" as a person other than a laborer, issued to him under the provisions of the act of May 5, 1892 (27 Stat. 25), is not entitled thereby to the "return certificate" provided for in Article II of the treaty with China of December 8, 1894 (28 Stat. 1210), as that article applies only to registered Chinese laborers. 24 Op. 132.

*d. Certificate of Disability.*

68. *By whom to be issued.*—Article II of the convention with China of December 8, 1894 (28 Stat. 1219), abrogates that portion of section 7 of the act of September 13, 1888 (25 Stat. 477), which requires a returning Chinese laborer after an absence from the United States of more than one year and less than two to present with his return certificate a certificate



of the consular representative of the United States at the port of departure for this country, showing that the holder has been unable to return sooner by reason of sickness, etc., and provides that this certificate of disability shall be issued by the Chinese consul at the port of departure from this country. 23 Op. 545.

Opinions of May 20, 1896 (21 Op. 347), and May 26, 1896 (21 Op. 357), reviewed and approved. *Ib.*

69. *Same*.—Article II of the treaty with China of 1894 displaced the provisions of section 7 of the act of 1888 with regard to the certificate of disability which must be presented by a registered Chinese laborer returning to the United States after an absence of more than one year. (*See* 23 Op. 545.) 24 Op. 544.

### III. Chinese Persons Entitled to Enter or Reenter, etc.

70. Chinese body servants or nurses who accompany visitors entitled to enter the United States, and who only remain here temporarily during the stay of such visitors, do not fall within the provisions of section 6 of the act of May 6, 1882 (22 Stat. 60), as amended by the act of July 5, 1884 (23 Stat. 115). 18 Op. 542.

71. The owner of a restaurant is not a laborer within the meaning of the Chinese acts of May 6, 1882 (22 Stat. 58), July 5, 1884 (23 Stat. 115), and October 1, 1888 (25 Stat. 504). 20 Op. 602.

72. A Chinese proprietor of a restaurant was duly classified as a merchant and obtained the necessary certificate entitling him to reenter the United States. At the time of his return to this country such persons were deemed laborers and he was refused admission. Held that as he had been regularly classified as a merchant the Department should not, in fairness, refuse to recognize him as such and he should be admitted. 22 Op. 324.

73. Cigar manufacturer.—A Chinese person, resident in the United States and member of a firm engaged in the manufacture of cigars within the United States and of selling the cigars so manufactured, who, having temporarily left the United States, desires readmission, is a returning merchant in the

sense in which that word is used in the treaty and the laws relating to the exclusion of Chinese and as such is entitled to readmission into this country. 23 Op. 485.

74. *Same*.—The true theory is not that all Chinese persons may enter this country who are not forbidden, but that only those are entitled to enter who are expressly allowed to do so. *Ib.*

75. *Same*.—Merchant who is also a manufacturer.—The fact that a bona fide Chinese merchant is also a manufacturer makes him none the less a merchant within the meaning of the treaty and the laws referred to. *Ib.*

76. Merchants already in the United States when the act of November 3, 1893 (28 Stat. 7), took effect, the third paragraph of section 2 of which requires proof of an applicant for readmission that he actually conducted a business here as merchant, may leave and return as if that act had not been passed. 21 Op. 21.

77. *Same*.—Chinese merchants residing in the United States prior to November 3, 1893, may depart from and return to the United States under the same conditions as prevailed prior to the taking effect of the Chinese exclusion act approved May 5, 1892. (*Lee Kan v. United States*, 62 Fed. Rep. 914, cited, and opinion of May 14, 1894, 21 Op. 21, reaffirmed.) 21 Op. 99.

78. Chinese subjects at Hongkong.—Admission upon certificate signed by representative of the colonial government.—The treaty of 1894 with China so modifies the requirements of section 6 of the act of July 5, 1884 (23 Stat. 116), that Chinese subjects resident at the British colony of Hongkong, and belonging to one of the privileged classes, may now be admitted to the United States upon a certificate signed by the proper representative of the colonial government. 21 Op. 347.

79. The number of Chinese to be admitted to this country as participants in the Tennessee Centennial Exposition may be limited by the Secretary of the Treasury. 21 Op. 517.

80. Chinese passing through the United States.—A Chinese laborer who comes to this country merely to pass through it is not within the prohibition of section 1 of the act of May 6, 1882 (22 Stat. 58). 17 Op. 483.

81. *Same*.—That section deals with Chinese as immigrants to this country and must be construed in connection with the provisions of the treaty of 1880. *Ib.*

Opinion of July 18, 1882 (17 Op. 416) overruled. *Ib.*

**82. Same.**—Opinion of December 26, 1882 (17 Op. 483), touching the right of Chinese laborers to pass through the United States in the course of their journey to and from other countries, reaffirmed. 19 Op. 369.

**83. Same.**—The application of that opinion to the case presented is unaffected by the acts of July 5, 1884 (23 Stat. 115), and October 1, 1888 (25 Stat. 504). *Ib.*

**84. Same.**—Chinese laborers coming to this country merely en route to some other country may lawfully be permitted to pass through the United States. 20 Op. 693.

**85. Same.**—The question of the right of transit of Chinese persons from a port of the United States to the territory of Mexico, or from a port of the United States directly by sea to a foreign port, being now before the courts, it would not be proper for the Attorney-General to express an opinion thereon. 23 Op. 585.

**86. Transfer of Chinese crew in port of the United States.**—A Chinese crew which shipped at Hongkong on a vessel belonging to a company chartered under the laws of the United States, for a trip to San Francisco and return by the same vessel or any other vessel belonging to that company, which crew, owing to an accident to the ship, was brought to San Francisco on a vessel belonging to a different company, may be transferred to another vessel substituted for the one injured, after having duly signed for that service before a United States shipping commissioner. 24 Op. 111.

**87. Same.**—The landing of the crew, temporarily, for the purpose of transfer, would not violate the treaty with China and the laws of the United States in relation to the exclusion of Chinese. *Ib.*

**88. Same.**—The Chinese exclusion laws and the alien contract labor laws have no application to seamen who, in good faith, are engaged in navigation, and who are temporarily within a port of the United States for that purpose. The transfer of the Chinese crew of the Danish steamer *Arab* to the Danish steamer *Stanley Dollar*, and of a Chinese crew from a vessel of the Pacific Mail Steamship Line to the steamer *Siberia*, of the same line, under the conditions

named, would not involve a violation of either of those laws. 24 Op. 553.

**89. Head tax—Transshipment in port of the United States.**—The mere transfer from one vessel to another in a port of the United States, of alien Chinese passengers en route to their destination in a foreign country, does not subject such persons to the payment of the "head tax" or duty prescribed by section 1 of the act of August 3, 1882 (22 Stat. 214), as amended by the act of August 18, 1894 (28 Stat. 391). 24 Op. 590.

**90. A Chinese person born or naturalized in the Hawaiian Islands prior to the annexation of that Territory, and who has not since lost his citizenship, is a citizen of the United States, and his wife and children are entitled to enter the Territory "by virtue of the citizenship" of the husband and father.** 23 Op. 345.

**91. A Chinese child born in Hawaii in 1885 and taken to China by his mother is entitled to reenter that Territory, where his father still resides.** *Ib.*

**92. Entrance into Hawaii.**—There is nothing in the resolution of annexation of the Hawaiian Islands (30 Stat. 750), nor in the organic act which provides a government for that Territory (31 Stat. 141), nor in any law of Congress, which would prevent the entrance into those islands of Chinese, now legally resident in the United States and holding certificates of registration provided for by the acts of May 5, 1892 (27 Stat. 25), and November 3, 1893 (28 Stat. 7). 23 Op. 487.

**93. The "further immigration" of Chinese forbidden by the resolution of annexation is immigration from other countries than the United States.** *Ib.*

**94. Right to return to United States from Hawaii.**—The question of the right of such Chinese person, to return to the United States from the Hawaiian Islands, not decided. *Ib.*

#### IV. Chinese Persons Excluded.

**95. Laborers.**—The Attorney-General can not state as a basis for future departmental action, the classes of Chinese persons whose occupations would place them within the category of laborer. He can only answer as to each case when it arises. 20 Op. 602.

96. A Chinese laborer holding a certificate of residence under the act of May 5, 1892 (27 Stat. 25), who, prior to his leaving this country, has made application under oath for a return certificate, but who has not filed such application with the collector of customs nor received a return certificate as required by the treaty of 1894 with China (28 Stat. 1210), and the act of September 13, 1888 (25 Stat. 477), is not entitled to reentry, although such application bears upon its face the stamp and signature of the Chinese inspector showing the departure of such laborer on a certain date. 23 Op. 619.

97. Same.—The Treasury Department has no authority to issue to such person a return certificate *nunc pro tunc*, although such person may have believed that he had done all that was incumbent upon him, and may have been misled by the action of the Government officer in affixing to such application his certificate of departure. *Ib.*

98. The Treasury Department can not direct the admission of Chinese laborers who fail to obtain before their departure from this country the return certificate required by the treaty with China, although they complied with all the requirements affecting Chinese laborers who leave the United States, except the procuring of such certificates. 21 Op. 424.

99. Chinese persons known as "traders" are not entitled to admission to the United States for the first time though presenting a certificate in accordance with the requirements of the act of July 5, 1884 (23 Stat. 115). 22 Op. 130.

100. A "trader" is not expressly known to the law as among the exempt classes, nor is such a person fairly included in them unless as a merchant, and the statutory language can not be so construed. *Ib.*

101. Chinese applicants for admission to the United States should comply strictly with the requirements as to certificates. *Ib.*

102. The true theory of the Federal law is not that all Chinese persons may enter this country who are not forbidden, but that only those are entitled to enter who are expressly allowed. *Ib.*

103. Persons having dangerous contagious disease—Under immigration laws.—A Chinese person suffering from a dangerous contagious disease belongs to one of the classes of aliens which should be excluded from the United

States under the provisions of the immigration act of March 3, 1903 (32 Stat. 1213). 24 Op. 706.

104. Reentry denied.—A member of a Chinese copartnership within the United States, whose name is not a part of the firm name, is not a "merchant" within the meaning of section 2 of act of November 3, 1893 (28 Stat. 8), amending the act of May 5, 1892 (27 Stat. 25), and therefore is not entitled to leave the United States and return thereto as a merchant. 21 Op. 5.

105. Absent over one year.—The Secretary of the Treasury has no authority to permit the return to the United States of Chinese laborers who left for China after having received the necessary certificates entitling them to return, and availed themselves of the extension of one year provided by the treaty of 1894, and who, although they left China in sufficient time to reach the United States within the extended year, were delayed in quarantine by the Canadian authorities, so that in fact they did not reach this country until three days late. 21 Op. 575.

106. In the extension of one year the treaty has made the sole provision for delay, and in any event the laborer must return to the United States within the additional year. *Ib.*

107. Neither the Secretary of the Treasury nor the collector has discretion to inquire into causes of further delay or grant an additional extension. *Ib.*

108. Chinese, subjects of other countries.—Natives of China who have become subjects of Great Britain are, under section 15 of the act of July 5, 1884 (23 Stat. 118), prohibited entrance to this country. 20 Op. 729.

109. Chinese body servants or nurses are not persons "other than laborers" within the meaning of section 6 of the act of May 6, 1882 (22 Stat. 60), as amended by the act of July 5, 1884 (23 Stat. 115), when they come to this country to ply their vocations, and are excluded. 18 Op. 542.

110. Where, however, such servants or nurses accompany visitors entitled to enter the United States, and only remain here temporarily during the stay of such visitors, they do not fall within the scope of the legislation referred to. *Ib.*

111. Chinese laborers passing through the United States.—Chinese laborers desiring to return to their native land from other foreign

lands can not be transported across the territory of the United States without violating the act of May 6, 1882 (22 Stat. 58), *unless* such laborers were in the United States on the 17th day of November, 1880, or came here within ninety days after the passage of said act. 17 Op. 416.

Overruled: 17 Op. 483, 19 Op. 369, and 20 Op. 693. *See* 80-85.

112. *Same.*—The remedy for the alleged evil of Chinese laborers passing through the territory of the United States to, and returning from, China and other foreign countries, is proper matter for the consideration of Congress. 18 Op. 388.

Opinion of July 18, 1882 (17 Op. 416), construing the act of May 6, 1882 (22 Stat. 58), cited with approval. *Ib.*

113. Certain Chinese subjects presenting certificates in the Chinese language issued by the authorized representative of the Chinese Government, plainly stating the character and nature of their business, but not stating it in the English translation of the certificates accompanying the same, are not entitled to land in this country, section 6 of the act of July 5, 1884 (23 Stat. 116), providing that such certificates shall be in English and contain the information described. 22 Op. 608.

#### V. Expulsion or Deportation.

114. Chinese persons found to be unlawfully in this country may be removed directly to China unless they show conclusively by competent evidence that they are not subjects of China and are the subjects of some other foreign country. 20 Op. 171.

115. *Same.*—The burden of proof is upon a Chinaman claiming to be entitled to be returned to a foreign country other than China to establish the conclusion that he is a subject of such foreign country. *Ib.*

116. *Same.*—Whether a different rule should be applied under the acts of 1890 (26 Stat. 371, 387) and 1891 (26 Stat. 948, 968) to natives of China naturalized in a foreign country, not decided? *Ib.*

117. Under section 7, act of May 5, 1892 (27 Stat. 26), the Secretary of the Treasury may authorize the landing at a port in this

country of Chinese sentenced to deportation, and their detention at said port until the vessel returns and is ready to proceed on her return voyage. 21 Op. 18.

118. *Redeportation.*—Where Chinese deported returned to United States.—Certain Chinese persons of alleged American birth who entered the United States were deported to Canada, but subsequently returned to the United States: *Held*, the collector of customs has the right to enforce his exclusion by again returning them to Canada. 21 Op. 614.

119. *Expenses incident to arrest and detention.*—Where a sheriff in Washington Territory apprehended certain Chinamen and brought them before a United States commissioner, who, having found them to be in the country unlawfully, remanded them to the custody of the sheriff, to be sent out of the country: *Held*, that the expenses incurred by the sheriff in the performance of such service are payable from the appropriation made by the act of July 7, 1884 (23 Stat. 206), to meet expenses incurred in executing the act relating to the Chinese, approved May 6, 1882. 18 Op. 90.

120. *Detention—Expenses.*—The board bills of Chinese boys remaining at Richford, Vt., after they are denied the privilege of coming into the United States, should not be paid by the United States pending their subsequent arrest by the United States marshal and a hearing thereafter under the Chinese exclusion act, as they are neither under detention nor arrest. 22 Op. 51.

#### VI. Citizenship of.

121. The burden of proof is upon a Chinaman claiming to be entitled to be returned to a foreign country other than China to establish the conclusion that he is a subject of such foreign country. 20 Op. 171.

122. A certificate of the governor and commander in chief of the colony of Hong Kong and its dependencies and vice-admiral of the same, to the effect that he believes a Chinese person to be a British subject, is not competent evidence to prove such citizenship. 20 Op. 424.

123. The residence and domicil of a Chinaman remain in China until he acquires a new one with intent to remain in it. 20 Op. 171.

124. Since the act of May 6, 1882 (22 Stat. 58), neither State nor Federal courts had jurisdiction to admit Chinese to citizenship. 21 Op. 37, 581.

125. The certificate of a United States commissioner stating that a Chinaman charged with unlawfully coming within the United States, after a full hearing, was adjudged to have the lawful right to remain in the United States, and was accordingly discharged, it appearing that he is a citizen of the United States, should not be accepted as sufficient evidence of the right of the holders to enter this country. 21 Op. 581.

126. Whether or not children born in this country of subjects of the Chinese Empire are to be recognized as citizens of the United States, *Quare. Ib.*

127. Under the provisions of section 4 of the Hawaiian act of April 30, 1900 (31 Stat. 141), a Chinese person born or naturalized in the Hawaiian Islands prior to the annexation of that Territory, and who has not since lost his citizenship, is a citizen of the United States. 23 Op. 345.

128. *Same.*—The wife and children of such naturalized Chinaman are entitled to enter the Territory "by virtue of the citizenship" of the husband and father. *Ib.*

129. *Same.*—A Chinese child born in Hawaii in 1885 and taken to China by his mother is entitled to reenter that Territory, where his father still resides. *Ib.*

130. All Chinese persons who, on August 12, 1898, were citizens of the Republic of Hawaii, became by virtue of section 4 of the act of April 30, 1900 (31 Stat. 141), citizens of the United States. 23 Op. 509.

131. Any Chinese person who was a citizen of the Republic of Hawaii on August 12, 1898, and who has not since abandoned or been legally deprived of his citizenship, is a citizen of the United States. 23 Op. 352.

132. American registry—Vessel carrying an Hawaiian registry owned by naturalized Chinese citizen.—Such naturalized Chinese citizen may take the oath required by sections 4131 and 4142, Revised Statutes, and have his vessel admitted to registry as an American vessel, provided it carried an Hawaiian register on the 12th of August, 1898, and was at that time owned *bona fide* by a citizen of Hawaii or of the United States. *Ib.*

## VII. Appeals.

133. An appeal by a Chinese person, taken under section 13 of the act of September 13, 1888 (25 Stat. 479), to a judge of a district court, from the judgment of the commissioner, does not vacate, but merely suspends the judgment of the commissioner and proceedings thereunder until the appeal is dismissed. 22 Op. 340.

AUTHORITY OF THE SECRETARY OF THE TREASURY. *See* TREASURY, II, a.

CHINESE PASSING THROUGH UNITED STATES. *See* CHINESE, 80-85, 111, 112.

HAWAIIAN ISLANDS. *See* CHINESE, 2, 90-94, 127-132.

POLICY AND THEORY OF THE FEDERAL LAW. *See* CHINESE, 3, 4.

TRANSFER OF CHINESE CREW WITHIN A PORT OF THE UNITED STATES. *See* CHINESE, 86-89.

CONSULAR OFFICERS OF CHINA IN FOREIGN COUNTRIES. *See* CHINESE, 58.

BODY SERVANTS. *See* CHINESE, 70, 109.

## CHINESE SECRETARY.

**Appointment—Confirmation.**—The change of name from "Interpreter to legation to China" to "Chinese secretary" in the appropriation act for the diplomatic and consular service, approved April 4, 1900 (31 Stat. 62), did not create a new office, but is merely a new name for the same office, and an appointment to this position by the President does not require the confirmation of the Senate. 23 Op. 136.

## CHIRIQUI IMPROVEMENT COMPANY.

1. **Contract.**—The instrument (set out in the opinion) signed by Ambrose W. Thompson, for himself and the Chiriqui Improvement Company, and Isaac Toucey, Secretary of the Navy, dated May 21, 1859, providing for the granting to the United States of certain lands, rights of way, and harbor and coal privileges at the Lagoon of Chiriqui and the Harbor of Golfito, upon the approval of the same by Congress and the appropriation of \$200,000 as compensation therefor, is in no sense a con-

tract obligatory upon the United States. 19 Op. 50.

2. The appropriation of \$200,000, made by the act of March 3, 1881 (21 Stat. 448), "To enable the Secretary of the Navy to establish at the Isthmus of Panama naval stations and depots of coal for the supply of steam-ships of war," has no application thereto. *Ib.*

### CHOCTAWS.

CITIZENSHIP. *See* INDIANS, 12-15.

INTERMARRIAGE. *See* INDIANS, 12-14.

IDENTIFICATION OF PART BLOOD MISSISSIPPI CHOCTAWS. *See* INDIANS, 11.

### CHOCTAW AND CHICKASAW INDIANS.

CITIZENSHIP COURT. *See* INDIANS, VII.

INTERMARRIED WHITE. *See* INDIANS, I, c, 17, 18.

APPROVAL OF PATENTS TO LAND. *See* INDIANS, III, a, 55.

TRESPASSERS ON LANDS OF. *See* INDIANS, III, b, 63-66.

COMPENSATION FOR LANDS TAKEN BY THE M., K. & T. RAILWAY. *See* INDIANS, III, d, 94.

RESIDENCE AMONG—PERMIT LAWS. *See* INDIANS, VIII, 172.

### CIRCULATING NOTES.

*See* INTERNAL REVENUE, II, c.

### CITIZENSHIP.

1. A corporation organized under the laws of any State in the United States is an American citizen within the meaning of the act of March 3, 1891 (26 Stat. 830). 20 Op. 161.

2. Chinese.—Since the act of May 6, 1882 (22 Stat. 58), no court, State or Federal, has jurisdiction to admit Chinese to citizenship. 21 Op. 37, 581.

3. Same.—Whether or not children born in this country of subjects of the Chinese

Empire, are to be recognized as citizens of the United States: *Quere. Ib.*

*See also* CHINESE, VI.

4. Spaniards in Cuba—Treaty of Paris.—Under Article IX of the treaty of Paris, 1898 (30 Stat. 1759), a Spaniard born in the Peninsula, who died in Cuba before the expiration of one year from the ratification of that treaty, was, in the contemplation of the treaty, a Spanish subject at the time of his death. 23 Op. 93.

5. Porto Rico—Treaty of Paris.—The attitude of the executive and legislative departments of the Government has been and is that the native inhabitants of Porto Rico and the Philippine Islands did not become citizens of the United States by virtue of the cession of these islands by Spain by means of the treaty of Paris, 1898. 23 Op. 370.

6. The act for the temporary government of Porto Rico did not confer Federal citizenship upon the inhabitants of that island. *Ib.*

7. A native Porto Rican, an artist by profession, although temporarily living in France on the 11th day of April, 1899, is, under section 7 of the act of April 12, 1900 (31 Stat. 79), a citizen of Porto Rico, and, as such, is an American artist, whose paintings upon importation into the United States are entitled to the privileges provided in paragraph 703 of the tariff act of July 24, 1897 (30 Stat. 203). 24 Op. 40.

8. A certificate of naturalization which states "and said applicant having personally appeared in court, producing such evidence and affidavits and making such declarations and renunciation, and taking such oaths as are by the said acts required; and all of said papers being filed and recorded, it was ordered that he be admitted to citizenship," meets the requirement of section 39 of the Immigration act of March 3, 1903 (32 Stat. 1222). 25 Op. 23.

*See also* INDIANS, I, c.

### CITY ORDINANCES.

*See* MUNICIPAL ORDINANCES.

### CIVIL ENGINEERS.

OF THE NAVY. *See* NAVY, IV, 156.

**CIVIL SERVICE.****I. Civil Service Act, Rules, and Regulations.**

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**III. Classified Service.**

- a. *Eligibility*, 63-72.
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**V. Soldiers and Sailors, 123-127.****VI. The President, 128-133.****I. Civil Service Act, Rules, and Regulations.**

- a. *The Act*.

1. Subsection 3 of section 2 of the Civil Service Act of January 16, 1883 (22 Stat. 404) is directory only, and an appointment inadvertently made upon a certification from the eligible list of one State, where the appointee was at the time of his appointment a resident of another State, is not invalid. 20 Op. 274.

2. Section 3.—Doubt suggested as to whether the provision in section 3 of the act of January 16, 1883 (22 Stat. 403), for the employment of a "chief examiner," does not come in conflict with the constitutional rule on the subject of appointments (Art. II, sec. 2) which vests the appointing power in the President, courts of law, and in the heads of Departments. 17 Op. 504.

3. Section 3 of the civil-service act of January 16, 1883 (22 Stat. 405), authorizes the detail of persons in the official service of the Executive Departments to be members of the boards of examiners in the Civil Service Com-

mission, but does not authorize such detail for any other purpose or service. 25 Op. 379.

4. Section 9.—Whether there are already two or more members of a family in the public service, etc., as provided in section 9 of the civil service act of January 16, 1883 (22 Stat. 406), is not a question to be considered by the Civil Service Commission, but by the appointing power. 17 Op. 554.

5. Section 9.—Where a father and daughter held each an office in the classified service in one of the Departments, and another daughter, having passed the required examination, was proposed for appointment in another Department: Held that, by force of section 9 of the act of January 16, 1883 (22 Stat. 406), the last-mentioned daughter, so long as the above state of facts exists, is ineligible for appointment to any office or place in the classified service. 18 Op. 83.

6. Special examiners of the Pension Bureau authorized to be appointed by the act of July 7, 1884 (23 Stat. 187), and by the act of March 3, 1885 (23 Stat. 418), come within the purview of the civil-service act of January 16, 1883 (22 Stat. 403); and in appointing such officers the latter act and rules thereunder should be observed. 18 Op. 172.

7. District of Columbia—Officers and Employees.—The civil-service act of January 16, 1883 (22 Stat. 403), can not lawfully be applied to the officers and employees of the District of Columbia. 22 Op. 59.

8. Same.—The officers and employees of the District of Columbia are as distinct from the civil service of the United States as would be the officers of any civil government in one of the States of the Union from the civil service of the State itself. *Id.*

9. Section 11.—Solicitation of political contributions by Federal officers.—The sending of a circular letter by a political committee to Federal officers and employees, soliciting financial aid in Congressional or State elections, upon or attached to which appear the names of Federal officers or employees, is a violation of section 11 of the civil-service act (act of January 16, 1883; 22 Stat. 406), which declares that no officer or employee of the Government shall be in any manner concerned in soliciting or receiving any assessment or contribution for any political purpose whatever from any officer or employee of the United States. 24 Op. 133.

**10. Same.**—The statute unquestionably condemns all such circulars notwithstanding the particular form of words adopted in order to show a request rather than a demand and to give the responses a quasi-voluntary character. *Ib.* (p. 134.)

**11. Political contributions.**—An agent of the Government who receives money to pay secret agents is not guilty of either receiving or being concerned in receiving a contribution for a political purpose, within the meaning of the act of January 16, 1883 (22 Stat. 403), where he received and honored an order from one of said secret agents to pay money out of the next remittance to a person not in the Government service as a contribution in aid of a political campaign, it appearing that said agent had nothing whatever to do with soliciting, inducing, or causing said secret agent to give the order, and had no relation or connection with the person to whom he paid the money, and had no concern in or control over the money after it was so paid, although he knew for what purpose it was paid. 21 Op. 298.

**12. Same.**—Said act does not forbid voluntary contributions for political purposes by persons in the employ of the Government, but protects such persons from solicitation or coercion with respect to such contributions. *Ib.*

*See also* CONGRESS, 33.

**13. Original entry into the service not limited to any class or grade.**—There is nothing in the act of 1883 that confines original entry into the service to any particular class or grade. 17 Op. 623.

**14. Section 164, Revised Statutes, repealed.**—The act of January 16, 1883 (22 Stat. 403), to regulate and improve the civil service of the United States, repeals by implication section 164, Revised Statutes, which provides for the examination and appointment of clerks specified in the preceding section. 18 Op. 245.

**15. Section 4415, Revised Statutes, repealed.**—The civil-service act of January 16, 1883 (22 Stat. 403), repealed section 4415, Revised Statutes, so far as it prescribes the method by which vacancies on the board of inspectors of hulls and steam vessels shall be filled. 21 Op. 393.

*See also* under the various other headings to this subject.

#### b. Rules and Regulations.

**16. Department Rule 1, paragraph 7.**—Whether certain compilers are scientific or professional experts, within the meaning of paragraph 7 of special department rule No. 1, is entirely a matter of fact, as to which the Attorney-General can express no opinion. 20 Op. 590.

**17. Postal Rule I.**—The President's order of January 5, 1893, amending postal rule No. 1 (under the civil-service act of January 15, 1883\* (22 Stat. 403), went into effect at once, in so far as it calls for classification by the Postmaster-General and for the provision of examinations by the Civil Service Commission; otherwise it went into effect at each free-delivery post-office as soon as the classification was completed and first examination provided at that office. 20 Op. 584.

**18. Section 4 of departmental Rule II.**—The phrase "no person appointed to a place under the exceptions to examinations made by any departmental rule," as used in the civil-service rules substituted by the President November 2, 1894, for section 4 of departmental Rule II, affects persons holding the positions at the time as well as those thereafter appointed. 21 Op. 91.

**19. Rule III of the civil service includes** in the departmental service all employees of whatever designation, however, or for whatever purpose employed, whether compensated by a fixed salary or otherwise, who are serving in or on detail from the several Executive Departments, commissions, and offices in the District of Columbia. 21 Op. 407.

**20.** The confidential agents employed in the free-delivery division of the Post-Office Department, and designated as secret agents, were not classified under Rule III, by the civil-service rules promulgated May 6, 1896. *Ib.*

**21.** This rule covers only those who are to be regarded as appointed for service in the Departments at the seat of Government, whether for the time being actually employed there or detailed for service elsewhere, as distinguished from those appointed for service in the States or Territories. *Ib.*

**22. Rule IV, section 5.**—The board of designators provided by section 4419, Revised Statutes, to fill vacancies in local boards of inspectors of steam vessels, can not act as a



board of examiners under the civil-service act, unless the members of such board are selected and appointed as such board of examiners under section 5, Rule IV. 21 Op. 393.

**23. Rule VII—Rule II.**—The proposed amendment of Departmental Rule VII, and revocation of Departmental Rule II, of the regulations of the Civil Service Commission, for the employment of substitutes for clerks, copyists, and other employees in the Departments, who are temporarily absent on account of sickness or other unavoidable cause, and for the selection of such substitutes from persons regularly certified by the Civil Service Commission, considered in connection with section 4 of the act of August 5, 1882 (22 Stat. 255), and section 4 of the act of March 3, 1883 (22 Stat. 563), and *advised* that while the amendment proposed is not beyond the power of this Commission, with the approval of the President, to make, yet that such amendment would be practically inoperative because of the lack of authority on the part of the heads of the Departments to make an additional expenditure for the employment of substitutes. 19 Op. 507.

**24. Rule VIII, paragraph 15.**—The amendment of the civil-service rules of May 29, 1899, paragraph 15 of Rule VIII, authorizing the permanent employment of persons serving under temporary appointments, was intended to apply only to such persons as were serving under temporary appointments pursuant to Rule VIII, and such amendment does not comprehend temporary appointments made under the act of July 1, 1898. 22 Op. 556.

**25. An appointment by the Secretary of State,** without reference to or conformity with the regulations prescribed for appointments in the classified service, made pursuant to the act of July 3, 1898, authorizing the temporary employment of stenographers and typewriters in his Department, is lawful. *Ib.*

**26. Rule IX, reinstatement.**—An army officer detailed for duty in a clerical position in the War Department is not in the classified service, and after separation therefrom can not be reinstated under Rule IX by reason of his war service. 22 Op. 6.

**27. The volunteer pension branch of the War Department** was never within the classified

service, and positions therein can not now be classified, because that branch no longer exists. *Ib.*

**28. Rule IX, section 2—Reinstatement—Reduction of force specifically required by law.**—The words "specifically required by law," found in section 2, Rule IX, of the civil-service rules, which provides that "Any person who has been separated from the service by reason of a reduction of force specifically required by law may be reinstated," etc., mean that the reduction of force must have been specifically required, not that the removal of the particular individual must have been specifically required by law. 23 Op. 87.

**29. Rule IX, third proviso.**—The third proviso of Rule IX of the civil-service rules, as amended May 29, 1899, which provides that any person who has been separated from the service by reason of a reduction of force specifically required by law may be reinstated without regard to the length of time he or she has been separated from the service, does not authorize the restoration, thereto of a person who has been employed to do a particular service, to be paid out of a specific appropriation, after the work which the person has been employed to perform has been completed and the appropriation therefor exhausted. 23 Op. 463.

**30. Same.**—The reinstatement permitted by that rule is a reinstatement in the same Department or office and to the same branch of the service. *Ib.*

**31. Rule IX.**—The question whether a person formerly employed as a clerk in the temporary or Spanish war force, and who resigned September 30, 1901, is eligible to be reinstated under Rule IX of the Civil Service Regulations depends upon the date of the requisition. If the position was within the classified service at the date of the requisition, then such person is eligible. 24 Op. 103.

**32. Same.**—The word "may" in Rule IX vests a discretion in the Commission. The question of reinstatement is one of administrative discretion, and is not to be granted except when consistent with the interests of the public service. *Ib.*

**33. Rule IX, as amended,** which provides for the reinstatement of a person separated, without delinquency or misconduct, from a

"competitive position," means the separation from a position "competitive" at the time of the request for reinstatement, and not that the position must have been competitive at the time of such separation. 25 Op. 618.

34. **A soldier's widow**, formerly employed in the War Department under an appropriation for emergency clerical work made necessary by the war with Spain, who resigned from her position on December 31, 1900, which position was covered into the classified service by section 3 of the act of April 28, 1902 (32 Stat. 171), is eligible, under Rule IX of the Civil Service Regulations, to reinstatement in that Department. *Ib.*

35. **Rule X.**—A clerk who resigned from the War Department June 30, 1888, and was reappointed to a clerkship in the same Department November 2, 1888, but failed to accept such reinstatement and the appointment was canceled January 28, 1889, is not eligible, under Departmental Rule X, to reappointment after one year from the date of his resignation. 19 Op. 416.

36. **Rule X.**—A person who served as a contract surgeon, in the late war of the rebellion, with troops in the field and in hospitals, and by completing his contract was honorably discharged from the service, is within the proviso to Departmental Rule X of the Civil Service Rules and Regulations, and entitled to the benefits thereby conferred. 19 Op. 533.

*See also* 19 Op. 434 and 17 Op. 457.

37. **Rule X.**—The Attorney-General is not authorized to review, at the request of the Secretary of the Interior, the decisions of the Civil Service Commission on the construction of Departmental Rule X in regard to reinstatement, for the reason that under that rule the matter of certification rests with the Commission, and having decided adversely to the applicant, there is now no question in the matter pending before the Interior Department. 20 Op. 158.

38. **Extension of the civil-service rules to new offices** does not operate as restrictions upon the right of appointment until examinations have been provided for such offices by the Civil Service Commission. It is not material, however, whether or not such examinations produce candidates eligible for the offices. In case of failure, noncompetitive examinations may at once be demanded. 20 Op. 584.

39. **Proposed amendment of rules—Porto Rico—The Philippines.**—There is nothing in the recent decisions of the Supreme Court (in the Insular cases) that would modify the view taken by the Attorney-General (23 Op. 370), regarding the proposed amendment to the civil-service rules, that "every applicant for examination for appointment to the executive civil service of the United States in Porto Rico must be a citizen of the United States or a citizen of Porto Rico; and that every applicant for appointment to said service in the Philippine Islands must be a citizen of the United States or a native inhabitant of said islands." 23 Op. 458.

40. **The construction of regulations of the Civil Service Commission** is a matter entirely within the province of the Commission, and should not be attempted by the Attorney-General. 20 Op. 649.

## II. Civil Service Commission.

### a. Generally.

41. **The Civil Service Commission is not attached in anywise to any of the Executive Departments**, nor is it subject in anywise to the control of any of the heads of such Departments. 22 Op. 62.

42. **Hours of labor of clerks.**—Section 7 of the act of March 15, 1898 (30 Stat. 316), requiring of clerks and other employees of the several Executive Departments not less than seven hours labor a day, does not apply to the Civil Service Commission or to its clerks or employees. *Ib.*

43. **Prosecution of claims by former employee—Commission not a Department.**—The inhibitions contained in section 190, Revised Statutes, respecting the prosecution of claims against the United States, are not applicable to the United States Civil Service Commission, its officers, clerks, or employees, said Commission not being comprehended within the term "Department" as used in that section. 25 Op. 6.

44. **Same.**—Mr. A. R. Serven, formerly chief examiner of the United States Civil Service Commission, if not otherwise disqualified, is entitled to be enrolled as an attorney for the prosecution of claims against the United States before the Treasury Department. *Ib.*

45. The **Attorney-General declines to express an opinion upon the question submitted by the Civil Service Commission** as to whether the Secretary of the Interior in employing persons to make the transcripts of records and plats in the General Land Office authorized by the act of April 28, 1904 (33 Stat. 483), may select such persons without regard to the Civil Service act and rules, for the reason that the Secretary of the Interior and the Civil Service Commission have had no conference respecting the question and no disagreement thereon, as is required by the Executive order of November 29, 1904, before the matter may be submitted to the Attorney-General for his opinion. 25 Op. 492.

*b. Officers.*

46. The **boards of civil-service examiners**, though subordinate to the Commission, may be regarded as officials of the respective Departments in connection with which they act. 20 Op. 557.

47. **Board of examiners.**—The board designated by section 4415, Revised Statutes, to fill vacancies in the Steamboat-Inspection Service, of inspectors of hulls of steam vessels, can not act as a board of examiners under the civil-service act of January 16, 1883 (22 Stat. 403), unless its members are duly selected and appointed as such under section 5, Rule IV. 21 Op. 393.

48. **Appointment or employment of a "chief examiner."**—Doubt suggested whether the provision in section 3 of the act of January 16, 1883 (22 Stat. 404), for the employment of a "chief examiner" by the Civil Service Commission does not come in conflict with the constitutional rule on the subject of appointments (sec. 2, Art. II), which vests the appointing power in the President, the courts of law, and in the heads of Departments. 17 Op. 504.

49. **Same.**—The word "employ" is sometimes used in our legislation in a sense equivalent to "appoint." *Ib.*

50. **Chief examiner—Appointment.**—The office of chief examiner in the Civil Service Commission, created by the act of January 16, 1883 (22 Stat. 403), is to be filled by appointment by the President, with the advice and consent of the Senate, coming within the terms "all other officers of the United

States" in clause 2, section 2, Article II of the Constitution. 18 Op. 409.

*c. Authority.*

51. **The President and the Civil Service Commissioners can make all reasonable regulations as to the nature of the testimony required to establish the facts as to residence**, but they can not narrow the definition of the statutory phrase "actual bona fide residence" found in the act of July 11, 1890 (26 Stat. 235). 20 Op. 649.

52. **Civil Service Commission—Reinstatements.**—The Attorney-General is not authorized to review, at the request of the Secretary of the Interior, the decisions of the Civil Service Commission on the construction of Departmental Rule X in regard to reinstatement, for the reason that under that rule the matter of certification rests with the Commission, and having decided adversely to the applicant, there is now no question in the matter pending before the Interior Department. 20 Op. 158.

53. **Same.**—The question as to whether the Civil Service Commission shall issue a certificate for reinstatement of an officer of the Treasury Department is not one arising in the administration of the Treasury Department and, therefore, not a question upon which it would be proper for the Attorney-General to express an opinion at the request of the Secretary of the Treasury. 20 Op. 312.

54. **Same.**—The Attorney-General can not reverse the decision of the Civil Service Commission or require it to issue a certificate of reinstatement. 20 Op. 270.

55. **The construction of regulations of the Civil Service Commission** is a matter entirely within the province of the Commission, and should not be attempted by the Attorney-General. 20 Op. 649.

56. **The question whether there are already two or more members of a family in the public service, etc., as provided in section 9 of the civil-service act of January 16, 1883 (22 Stat. 402), is not one to be considered by the Civil Service Commission**, but by the appointing power. 17 Op. 554.

*d. Production or Inspection of Records.*

57. **The application and examination papers or other records of the civil-service ex-**

aminers are official records or papers of the President, or of a head of a Department, and the production of such papers can not be compelled where the general public interest is paramount to the interest of private suitors. 20 Op. 557.

58. *Same.*—Whether the general public interest forbids the production of such record or paper in court, is a question not for the judge, but for the President or head of the Department having legal custody thereof. *Ib.*

#### e. Detail.

59. The Secretary of Agriculture can legally detail any such officers or employees from his Department as may be requested by the Civil Service Commission, but he can not assign an officer of the Army detailed for service in the Weather Bureau to any other duties than those for which he is by law authorized to be detailed in the Weather Bureau. 20 Op. 750.

60. *Same.*—The Postmaster-General has no authority to detail a registry clerk from the Washington post-office on detached service at the White House; and the accounting officers of the Treasury having refused to allow credits to the postmaster for salary paid such clerk for the period covered by the detail, that officer must be remitted to Congress for an appropriation for his relief. 25 Op. 301.

61. *Same.*—Section 3 of the civil-service act of January 16, 1883 (22 Stat. 405), authorizes the detail of persons in the official service of the Executive Departments to be members of the boards of examiners in the Civil Service Commission, but does not authorize such detail for any other purpose or service. 25 Op. 379.

Opinion of December 22, 1904 (25 Op. 301), adhered to. *Ib.*

62. **Return of clerks detailed to Civil Service Commission.**—The provision of the legislative, executive, and judicial appropriation act of February 3, 1905 (33 Stat. 643), prohibiting the detail of clerks or other employees from the Executive Departments in Washington to the Civil Service Commission for duty in the District of Columbia, was not only intended to prohibit further details, but to secure the return to their respective Departments of all clerks now under detail. 25 Op. 382.

### III. Classified Service.

#### a. Eligibility.

63. The question as to whether there are already two or more members of a family in the public service, etc., as provided in section 9 of the civil-service act of January 16, 1883 (22 Stat. 406), is not one to be considered by the Civil Service Commission, but by the appointing power. 17 Op. 554.

64. *Same.*—Where a father and daughter held each an office in the classified service in one of the Departments, and another daughter, having passed the required examination, was proposed for appointment in another Department: *Held* that, by force of section 9 of the act of January 16, 1883 (22 Stat. 406), the last-mentioned daughter, so long as the above state of facts exists, is ineligible for appointment to any office or place in the classified service. 18 Op. 83.

65. **Certificates of residence.**—The expressions "departmental service" and "the service," as used in the *proviso* in that part of the legislative, executive, and judicial appropriation act of July 11, 1890 (26 Stat. 235), requiring certificates of residence of applicants for examination before the Civil Service Commission, mean the classified civil service as established by section 163, Revised Statutes, and section 6 of the act of January 16, 1883 (22 Stat. 405). 19 Op. 624.

66. *Same.*—The words "promotion or appointment in other branches of the Government," in the exception to that *proviso* (26 Stat. 235) signify promotion or appointment in the classified service of some other Department than that to which the applicant may belong. *Ib.*

67. *Same.*—An application for a transfer is not within the exception of the *proviso*. *Ib.*

68. *Same.*—What officers may make the certificate.—Congress not having designated in the *proviso* any particular county officer or officers who may make the certificate required to accompany the application, this matter must be presumed to have been left as a subject for regulation by the Civil Service Commission. *Ib.*

69. **Bona fide residence.**—A general rule applicable to all cases can not be formulated as to what constitutes bona fide residence under the provision in the act of July 11, 1890 (26 Stat. 235), for application for exami-

nation before the Civil Service Commission. The purpose of that proviso was to discriminate against persons who claim the benefit of such citizenship, and who disclaim and fail to discharge any of the obligations of such State residence and citizenship. 20 Op. 60.

**EVIDENCE OF RESIDENCE.** See VI—President.

**70. Same.**—The facts bearing upon the question of the residence of Edward D. Morrill on August 4, 1890, considered; and, *Held*, that Morrill was not an actual and bona fide resident either of the county of Wilcox or of the State of Alabama on the date named, nor had he been for any of the six months next preceding that date. 21 Op. 33.

**71. Same.**—Opinion of June 8, 1894 (21 Op. 33), will not be reconsidered for the purpose of passing upon new and conflicting evidence. The credibility of witnesses and the weight of evidence are not questions to be considered in rendering an opinion. 21 Op. 58.

**72. Citizen of Porto Rico—The Philippines.**—There is nothing in the recent decisions of the Supreme Court (in the Insular cases) that would modify the view taken by the Attorney-General (23 Op. 370) regarding the proposed amendment to the civil-service rules, that every applicant for examination for appointment to the executive civil service of the United States in Porto Rico must be a citizen of the United States or a citizen of Porto Rico; and that every applicant for appointment to said service in the Philippine Islands must be a citizen of the United States or a native inhabitant of said islands. 23 Op. 458.

#### b. Examinations.

**73. Transfer from positions not requiring examinations.**—The phrase “no person appointed to a place,” as used in the civil-service rule substituted by the President November 2, 1894, for section 4 of departmental Rule II, which new rule provides against transfer of persons holding positions not requiring examination to positions requiring examination, affects those holding places at that time as well as those thereafter appointed. 21 Op. 91.

**74.** The act of March 2, 1895 (28 Stat. 776, 777), does not make the offices of law clerks in the offices of the Comptroller and Auditor of the Treasury the subject of competitive examination. 21 Op. 187.

**75. Classification for purpose of examination.**—Departmental clerks whose salaries are \$900 or \$1,000 per annum, although not belonging to either of the classes in section 163, Revised Statutes, come within the scope of the act of January 16, 1883 (22 Stat. 403), and may be classified thereunder for the purpose of examination into one or more classes, as may be deemed expedient. 17 Op. 621.

**76. Same.**—If the \$900 or \$1,000 clerkships are constituted a distinct class, a promotion from such class to another class without examination, excepting where, in conformity to the act, the person to be promoted is specially exempted, would be forbidden by the act of January 16, 1883. *Ib.*

**77. Same.**—To be eligible for appointment to any class (whether by promotion or otherwise) the applicant must have passed an examination to test his fitness for the place. *Ib.*

#### c. Certification.

**78. Withdrawal of notice of revocation of a selection.**—The head of a Department has no authority to withdraw his notice to the Civil Service Commission of his revocation of a selection for appointment and appoint the same party previously certified without a further certification from the Commission; and this although through a misunderstanding a wrong has been done the party originally selected. 20 Op. 64.

**79. An irregularity in the certification of the name of an eligible for appointment under the civil service is cured by the probational and absolute appointment of such a person.** 21 Op. 289.

**80.** The certificate of eligibles delivered to the appointing officer by the subordinates of the Civil Service Commission is a complete authority to such officer to make any selection he may desire therefrom, and is a complete protection to the appointee. 21 Op. 335.

#### d. Appointment.

**81. Extensions of the civil-service rules to new offices do not operate as restrictions upon the right of appointment until examinations have been provided for such offices by the Civil Service Commission.** It is not material, however, whether or not such examination produces candidates eligible for the office.

In case of failure, noncompetitive examinations may at once be demanded. 20 Op. 584.

82. An appointment inadvertently made upon certification from the eligible list of one State, where the appointee was at the time of the appointment a resident of another State, is not invalid, subsection 3 of section 2 of the civil-service act of January 16, 1883 (22 Stat. 406), being directory only. 20 Op. 274.

*See also 79.*

83. The certificate of eligibles delivered to an appointing officer by the subordinates of the Civil Service Commission is a complete authority to such officer to make any selection he may desire therefrom, and is a complete protection to the appointee. 21 Op. 335.

84. Oath not taken until after rule requiring examination had gone into effect.—A railway postal clerk who was appointed by the Postmaster-General on April 29, 1889, without having undergone a civil-service examination (none being then required for such appointment), but who did not take the oath of office and enter upon its duties until May 18, 1889, after the civil-service rules for the Railway Mail Service had gone into effect requiring an examination thereunder as a preliminary to making an appointment like the above, *Held* to have been legally appointed on April 29; his appointment was complete on that date, although he did not qualify by taking the oath of office until afterwards; and no examination under the civil-service rules was required in his case. 19 Op. 410.

#### *e. Promotion.*

85. The words "promotion or appointment in other branches of the Government," as used in the proviso in that part of the legislative, executive, and judicial appropriation act of July 11, 1890 (26 Stat. 235), requiring certificate of residence of applicants for examination, signify promotion or appointment in the classified service of some other Department than that to which the applicant may belong. 19 Op. 624.

*See also III, b—Examination.*

#### *f. Reinstatement—Reappointment.*

86. An army officer detailed for duty in a clerical position can not be considered as a member of the "classified service," and after

separation therefrom can not be reinstated under Rule IX. 22 Op. 6.

87. Reinstatement of carriers in free-delivery service.—In the exercise of his discretion the Postmaster-General abolished the free-delivery service at Huron, S. Dak., on January 15, 1895, and in consequence certain carriers were separated from the service. *Held* that on the reestablishment of free-delivery service at that place the former carriers could not be reinstated under Rule IX of the civil-service rules. 22 Op. 663.

88. To entitle a person to reinstatement in the civil service under Rule IX, by reason of the reduction of force, such reduction must be one required by law and not one caused by the exercise of a discretionary power vested in an executive officer. 22 Op. 663.

89. Reinstatement — Reduction of force specifically required by law.—The words "specifically required by law," found in section 2, Rule IX, of the civil-service rules, which provides that "Any person who has been separated from the service by reason of a reduction of force specifically required by law may be reinstated, etc.," mean that the reduction of force must have been specifically required, not that the removal of the particular individual must have been specifically required by law. 23 Op. 87.

90. The third proviso of Rule IX of the civil-service rules, as amended May 29, 1899, which provides that any person who has been separated from the service by reason of a reduction of force specifically required by law may be reinstated without regard to the length of time he or she has been separated from the service, does not authorize the restoration thereto of a person who has been employed to do a particular service, to be paid out of a specific appropriation, after the work which the person has been employed to perform has been completed and the appropriation therefore exhausted. 23 Op. 463.

91. Same.—The reinstatement permitted by that rule is a reinstatement in the same department or office and to the same branch of the service. *Ib.*

92. Reinstatement of temporary clerk to position in classified service.—A person formerly employed as a clerk in the temporary or Spanish war force, who resigned September 30, 1901, can not, by virtue of section 3 of the act of April 28, 1902 (32 Stat. 120, 171), which transferred these temporary positions to the

classified service, be reinstated without examination. 24 Op. 103.

**93. Same—Rule IX, Civil Service Regulations.**—The question whether such person is eligible to be reinstated under Rule IX of the Civil Service Regulations depends upon the date of the requisition. If the position was within the classified service at the date of the requisition, then such person is eligible. *Ib.*

**94. The word "may" in Rule IX of the Civil Service Regulations vests a discretion in the Commission.** The question of reinstatement is one of administrative discretion, and is not to be granted except when consistent with the interests of the public service. *Ib.*

**95. Reinstatement of former clerk—War Department.**—A soldier's widow, formerly employed in the War Department under an appropriation for emergency clerical work made necessary by the war with Spain, who resigned from her position on December 31, 1900, which position was covered into the classified service by section 3 of the act of April 28, 1902 (32 Stat. 171), is eligible, under Rule IX of the Civil Service Regulations, to reinstatement in that Department. 25 Op. 618.

**96. Same.—Rule IX, as amended,** which provides for the reinstatement of a person separated, without delinquency or misconduct, from a "competitive position," means the separation from a position "competitive" at the time of the request for reinstatement, and not that the position must have been competitive at the time of such separation. *Ib.*

Opinions of June 23, and August 27, 1902 (24 Op. 81, 103), approved. *Ib.*

Transfer. *See* 112–116.

HONORABLY DISCHARGED SOLDIERS. *See* 123–127.

**97. Reappointment after one year from resignation.**—A clerk who resigned from the War Department June 30, 1888, and was reappointed to a clerkship in the same Department November 2, 1888, but failing to accept of such reinstatement the appointment was canceled January 28, 1889, is not eligible, under Departmental Rule X, to certification for reappointment after one year from the date of his resignation. 19 Op. 416.

**98. Same.**—The act of reappointment did not of itself operate to restore the clerk to the service; it merely gave him the right to re-

enter the service, which right, not being exercised, was subsequently revoked. *Ib.*

#### *g. Miscellaneous.*

**99. Free delivery offices.**—The President's order of January 5, 1893, amending postal rule No. 1 under the civil-service act of January 16, 1883 (22 Stat. 403), went into effect at once, in so far as it called for classification by the Postmaster-General and for the provision of examinations by the Civil Service Commission; otherwise it went into effect at each free-delivery post-office as soon as the classification was completed and first examination provided at that office. 20 Op. 584.

**100. Same.—When free delivery is discontinued at a post-office, such office ceases to be under the civil-service rules, which apply to free-delivery offices only.** 22 Op. 613.

**101. Same.**—Free-delivery offices as a class, and not offices formerly free-delivery offices, were intended to be within postal Rule I and the present Rule III. *Ib.*

*See also* III, f, 87.

**102. The words "departmental service" and "the service,"** as used in the *proviso* in that part of the legislative, executive, and judicial appropriation act of July 11, 1880 (26 Stat. 235), requiring certificate of residence of applicants for examination, mean the classified civil service as established by section 163, Revised Statutes, and section 6 of the act of January 16, 1883 (22 Stat. 405). 19 Op. 624.

**103. Rule III of the civil-service rules promulgated May 6, 1896, covers only those employees who are to be regarded as appointed for service in the Departments at the seat of Government** (whether for the time being actually employed there or detailed for service elsewhere), as distinguished from those appointed for service in the States or Territories, or, as in the case of the Railway Mail Service, in the country at large. 21 Op. 407.

**104. Position covered into classified service by Executive order.**—A person appointed to a position not in the classified service, but which was subsequently classified by the Executive order of May 6, 1896, is not subject to a probation of six months, but is entitled to all the rights and benefits of persons of the same class or grade under the civil-service act, and may be transferred. 21 Op. 534.

*See also* FREE-DELIVERY OFFICES, 99–101.

105. The holding of a State office by an officer or employee in the civil service of the United States is not prohibited by any act of Congress. 18 Op. 3.

106. Same.—But prohibited by Executive orders.—By Executive orders dated January 17 and 28, 1873, which have not been revoked, persons holding any civil office under the United States are expected, while holding such office, not to accept or hold any State, Territorial, or municipal office, with certain exceptions; otherwise they will be regarded as having resigned the office held under the United States. *Ib.*

107. Same.—In the case of an employee of the United States Fish Commission, not in the service by appointment, who holds the office of village constable: *Advised* that he may properly exercise the functions of the latter office, provided this does not interfere with the regular and efficient discharge of his employment under the Government. *Ib.*

108. Substitute clerks.—The proposed amendment of departmental Rule VII, and revocation of departmental Rule II, of the regulations of the Civil Service Commission (providing for the employment of substitutes for clerks, copyists, and other employees in the Departments, who are temporarily absent on account of sickness or other unavoidable cause, and for the selection of such substitutes from persons regularly certified by the Civil Service Commission), considered in connection with section 4 of the act of August 5, 1882 (22 Stat. 255), and section 4 of the act of March 3, 1883 (22 Stat. 563), and *advised* that while the amendment proposed is not beyond the power of the Commission, with the approval of the President, to make, yet such amendment would be practically inoperative because of the lack of authority on the part of the heads of the Departments to make additional expenditures for the employment of the substitutes. 19 Op. 507.

TRANSFER FROM POSITIONS NOT REQUIRING EXAMINATION. See b, 73.

#### IV. Unclassified Service.

##### a. Temporary Appointments.

109. Draftsmen and skilled service.—The Secretary of the Treasury is authorized under

the provisions of the act of March 2, 1895 (28 Stat. 911), relative to the proposed new Government building at Chicago, to make temporary appointments of draftsmen and skilled service without certification from the Civil Service Commission. 21 Op. 261.

110. Temporary employment of stenographers and typewriters in the State Department.—An appointment by the Secretary of State, without reference to or conformity with the regulations prescribed for appointments in the classified service, made pursuant to the act of July 1, 1898 (30 Stat. 645), authorizing the temporary employment of stenographers and typewriters in his Department, is lawful. 22 Op. 556.

111. The amendment of the civil-service rules of May 29, 1899 (par. 15 of Rule VIII), authorizing the permanent employment of persons serving under temporary appointments, was intended to apply only to such persons as were serving under temporary appointments pursuant to Rule VIII. Such amendment does not comprehend temporary appointments made under the act of July 1, 1898 (30 Stat. 645). *Ib.*

APPOINTMENT OF ENGINEER AT MILITARY ACADEMY. See MILITARY ACADEMY, 13, 14.

##### b. Transfer to Classified Service.

112. Temporary laborers not transferred to classified service.—Section 3 of the act of April 28, 1902 (32 Stat. 711, providing for the transfer to the classified service of the "additional clerks on the temporary rolls and other employees rendered necessary because of the increased work incident to the war with Spain," operated to classify only those employees occupying positions which at that time were within the purview of the civil-service act and regulations, and did not place within the classified service laborers employed on the temporary roll without regard to the character of their work. 25 Op. 487.

113. Transfer of paymasters' clerks assigned to sea duty to a similar service in the Navy Department.—Paymasters' clerks assigned to sea duty not being classified by the Executive Order of May 6, 1896, while those performing similar services in offices on shore were, there is no authority for transferring one of the former to a similar position in the Navy Department. 21 Op. 503.



**114. War emergency employees—Transfer to classified service.**—Section 3 of the act of April 28, 1902 (32 Stat. 120, 171), which provides for the transfer to the classified service of the Government of certain temporary positions which were created to meet the exigencies of the war with Spain, exempts from examination such employees as filled these positions at the time of the passage of the act, and transfers the positions in question to the classified service. Subsequent vacancies must be filled in accordance with the laws and regulations governing appointments to the civil service. 24 Op. 81.

**115. "Temporary type-writers and stenographers"—Department of State.**—Section 3 of the act of April 28, 1902 (32 Stat. 120, 171), did not operate to place in the classified service certain stenographers and a laborer who had been employed by the Department of State since 1898 under succeeding yearly appropriations providing \$2,000 annually "for temporary typewriters and stenographers" in that Department, the same "to be selected by the Secretary." 24 Op. 95.

**116. Same**—Section 3 of the act of April 28, 1902 (32 Stat. 120, 171), applied only to war-emergency employees who had been repeatedly recognized, designated, and continued in employment in yearly appropriation acts as an "additional temporary force rendered necessary because of increased work incident to the war with Spain." *Ib.*

#### c. Miscellaneous.

**117. The volunteer pension branch of the War Department** was never within the classified service, and positions therein can not now be classified, as that branch no longer exists, having been merged into the Record and Pension Division of that Department. 22 Op. 6.

**118. An army officer detailed for duty in a clerical position** can not be considered as a member of the "classified service," and after separation therefrom can not be reinstated under Rule IX. *Ib.*

**119. Certain removals of superintendents and clerks in the Baltimore post-office,** made one day prior to the President's order of November 2, 1894, covering those places into the civil service, held to have been properly made, and the appointment of their successors

to have been legal although they did not qualify until several days later. (19 Op. 411, cited.) 21 Op. 140.

**120. Secret agents, Treasury Department.**—The confidential agents employed in the free-delivery division of the Post-Office Department, and designated as secret agents, were not classified under Rule III, by the civil-service rules promulgated May 6, 1896. 21 Op. 407.

**121. Rule III covers only those employees** who are to be regarded as appointed for service in the departments at the seat of Government (whether for the time being actually employed there or detailed for service elsewhere), as distinguished from those appointed for service in the States or Territories, or, as in the case of the Railway Mail Service, in the country at large. *Ib.*

**122. Employees of the Weather Bureau of the Department of Agriculture on duty away from and outside of the city of Washington** are not members of the classified civil service. 20 Op. 345.

#### V. Soldiers and Sailors.

**123. The joint resolution of March 3, 1865** (sec. 1754, Rev. Stat.), considered in connection with the act of March 3, 1871 (16 Stat. 495, 514), and held that honorably discharged soldiers and sailors are not exempt from liability to examination for admission into the civil service, but that they are entitled to a preference for appointment as against other persons of equal qualifications for the place. 17 Op. 194.

**124. Preference in appointment.**—By section 1754, Revised Statutes, it is made the duty of those making appointments to civil offices to give a preference, other things being equal, to persons honorably discharged from the military or naval service by reason of disability resulting from wounds or sickness incurred in the line of duty, but the matter of capacity and personal fitness for the place is for the determination of the appointing power. 19 Op. 318.

**125. Certification of discharged soldiers.**—A departmental clerk or employee who served in the war of the rebellion in the military organization known as "Quartermaster's Volunteers," or "Quartermaster's Brigade," and

was honorably discharged from the service: *Held* that he is entitled to the benefit of the proviso in departmental Rule X of the civil service, as one who "served in the military service of the United States in the late war of the rebellion, and was honorably discharged therefrom," within the meaning of that rule. 19 Op. 434.

126. *Same.*—A person who served as a contract surgeon, in the late war of the rebellion, with troops in the field and in hospitals, and by completing his contract was honorably discharged the service, is within the proviso to departmental Rule X of the Civil-Service Rules and Regulations, and entitled to the benefits thereby conferred. (See also as analogous in principle 17 Op. 457.) 19 Op. 533.

127. *Same.*—An honorably discharged soldier of the civil war who, upon his discharge, enlisted in the "general service" of the Army for clerical duty at headquarters, and was subsequently transferred to the Adjutant-General's Office, where he served on clerical duty from April 1, 1864, to May 13, 1868, when he was discharged through no delinquency on his part, was not, during such period of service, in the classified departmental service, and consequently, not having been separated from that service, does not come within the provision of amended departmental Rule X of the Civil Service Regulations, and can not be certified thereunder for reinstatement. 19 Op. 552.

See also DEPARTMENT OF COMMERCE AND LABOR, III, 26-28.

## VI. The President.

128. Undersection 1753, Revised Statutes, the President may prescribe regulations for admission into the civil service, and thereby restrict original entry therein to one or more of the classes that may exist, or permit such entry to all of them as in his judgment will best promote the efficiency of the service. 17 Op. 621.

129. The President may in a particular case waive the civil-service rules in order to avoid injustice. 20 Op. 64.

130. The President's order of January 5, 1893, amending postal rule No. 1 (under the civil-service act of January 16, 1883, 22 Stat. 403), went into effect at once, in so far as it

called for classification by the Postmaster-General and for the provision of examinations by the Civil Service Commission; otherwise it went into effect at each free-delivery post-office as soon as the classification was completed and first examination provided at that office. 20 Op. 584.

131. Can not narrow the statutory requirements with regard to residence.—The President and the Civil Service Commissioners can make all reasonable regulations as to the nature of the testimony required to establish the facts as to residence, but they can not narrow the definition of the statutory phrase "actual bona fide residence" found in the act of July 11, 1890 (26 Stat. 233), by requiring on the part of an applicant for examination six months' continuous physical presence in the county as well as residence. 20 Op. 649.

132. Power to amend rules.—The furnishing of information.—It is within the power of the President so to modify the civil-service rules as to impose upon all officers and employees in the public service the duty of giving to the Civil Service Commission or its authorized representatives all proper and competent information in regard to all matters inquired of, and to subscribe to and make oath to such testimony before some officer authorized by law to administer oaths. 23 Op. 595.

133. *Same.*—The imposition of such a duty upon every officer and employee in the public service is neither unreasonable nor unsuitable. It is clearly within the exercise of the Executive power, and its legality can not be doubted. *Ib.*

APPOINTMENT OF CHIEF EXAMINER. See 48-50.

BOARD OF DESIGNATORS, STEAMBOAT INSPECTION SERVICE. See 22.

CERTIFICATES OF RESIDENCE. See 65-68.

EMPLOYEES AT THE SEAT OF GOVERNMENT. See 103.

FREE-DELIVERY OFFICES. See 99-101.

HOLDING STATE OFFICE. See 105-107.

HONORABLY DISCHARGED SOLDIERS AND SAILORS. See V.

LEAVES OF ABSENCE. See LEAVE OF ABSENCE. OATH OF OFFICE. See 84.

POLITICAL CONTRIBUTIONS. See 11, 12.

POSITION COVERED INTO CLASSIFIED SERVICE—PROBATION. See 101-104.

POSTAL MAIL CLERKS. *See* POSTAL SERVICE, II, c.

PROBATION. *See* 104.

SPECIAL EXAMINERS PENSION BUREAU: *See* 6.

SUBSTITUTE CLERKS. *See* 108.

TEMPORARY DRAFTSMEN. *See* 109.

TRANSFER. *See* 67, 73, 113-116.

TWO OR MORE MEMBERS OF SAME FAMILY.  
*See* 63, 64.

## CLAIMS.

### I. Against the United States—Domestic.

- a. *Arising under Government Contracts*, 1-5.
- b. *War Claims*, 6-30.
- c. *Indian Depredation Claims*, 31-35.
- d. *French Spoliation Claims*, 36.
- e. *Of States*, 37-46.
- f. *Assignment*, 47-54.
- g. *Payment*, 55-62.
- h. *Miscellaneous*, 63-75.

### II. Against the United States—Subjects of Foreign Powers, 76-87.

### III. Against Foreign Governments, 88-89.

### IV. Against Hawaii, 90-92.

### V. Claims of the United States, 93-104.

### I. Against the United States—Domestic.

- a. *Arising under Government Contracts*.

1. **Adjustment and payment—Unliquidated damages for breach of contract.**—Unless authorized by Congress, the head of a Department has no power to adjust and pay any claims for unliquidated damages, even when arising from the breach of a contract, except where such claims are for work and labor done or materials furnished under a contract silent as to the price and the amount thereof unliquidated. 22 Op. 437.

2. **A claim for profits and expenses incurred in the construction of a pier in the Aqueduct Bridge, Georgetown, D. C., under a contract with the United States which was annulled for lack of diligence in prosecuting the work, involving disputed facts, and possibly controverted questions of law, is properly referable to the Court of Claims under the first clause of section 1063, Revised Statutes.** 22 Op. 424.

### 3. Same—Reference to Court of Claims.—

The claim being one which might have been originally commenced in the Court of Claims by the voluntary action of the claimant, is not covered by the proviso to section 1063, Revised Statutes, providing for the reference of claims against Executive Departments to the Court of Claims. *Id.*

### 4. Compensation for cancellation of contract—Dudley & Michener—Mauser rifles.—

The claim of Dudley & Michener for the payment of a sum of money as compensation for the cancellation by the War Department of a contract entered into between that Department and the claimants for furnishing the Government with Mauser rifles is one which, under the act of July 31, 1894 (28 Stat. 208), and the decisions of this Department, should be referred to the Comptroller of the Treasury for his opinion. 23 Op. 86.

### 5. Armor-plate royalty—Harvey process.—

The Secretary of the Navy entered into a contract with the Carnegie Steel Company for the furnishing of armor plate, the contract providing that if the Carnegie Company should be "required" to pay royalty for the use of the Harvey face-hardening process in the manufacture of armor plate under its contract, the United States would reimburse it for the amount so paid. The Carnegie Company, by reason of its contract with the Harvey Company, was estopped from denying the validity of the Harvey patent. It used, as it is claimed, the Harvey process in the manufacture of the armor plate, and, having paid the royalty thereon, presents its claim for reimbursement. The Government denies the validity of the Harvey patent, and contends that no distinctive feature of the Harvey patent was used. A suit is pending in the Court of Claims which will determine these questions. *Held*, (1) That if the Harvey patent be valid, it may properly be urged that the Carnegie Company, being estopped from denying the validity of the patent, was therefore "required" to pay the royalty. (2) That the Secretary of the Navy should withhold his approval of the claim until the question of the right of the Harvey Company to collect royalty from the Government has been judicially determined in the pending suit. (3) The claim of the Bethlehem Steel Company for reimbursement for royalty paid, being based upon a

contract similar to that of the Carnegie Company, the Secretary should likewise withhold his approval of the claim of the Bethlehem Company. 23 Op. 495. *See also* 23 Op. 422.

PAYMENT. *See* CLAIMS, I, g; and TREASURY DEPARTMENT, I, b.

ASSIGNMENT. *See* CLAIMS, I, f.

b. *War Claims.*

6. **Property lost or destroyed in military service.**—The act of March 3, 1849 (9 Stat. 415), placed all claims presented under it within the exclusive jurisdiction of the Third Auditor. It made him the sole tribunal and his awards, called judgments, final. 17 Op. 352.

7. **Same.**—The award made by the Third Auditor on the 10th of May, 1861, under that law in favor of James and Richard H. Porter, was binding upon all officers of the Government. *Ib.*

8. **Same.**—The act of July 28, 1866 (14 Stat. 327), modifying said act of 1849, did not affect claims adjudicated by the Auditor before its passage. *Ib.*

9. **Property lost in the military service.**—The duty of the Secretary of War in the case of a claim under the act of March 3, 1885 (23 Stat. 350), is limited to the determination of whether the property for the loss of which indemnity is claimed was "reasonable, useful, necessary, and proper" for the claimant. 19 Op. 693.

10. **Same.**—Whether the loss happened under the circumstances described in the statute, and comes within the provisions thereof, is a question for the determination of the proper accounting officers of the Treasury, and so does not appertain to the administration of the War Department. *Ib.*

11. **Vessels destroyed in the service of the United States.**—Upon consideration of the facts submitted in this case, in connection with section 3483, Revised Statutes: *Held* that the steamer "Joseph Pierce," at the time of her destruction by fire, July 31, 1865, was not in the military service of the United States either by contract or impressment, and accordingly that the accounting officers of the Treasury have no jurisdiction under that section to allow the value thereof to the owners. 17 Op. 90.

12. **Same.**—A threat to seize a vessel unless certain troops and ammunition are received and transported, resulting in the compulsory

submission of the master of the vessel, does not constitute an impressment within the meaning of section 3483, Revised Statutes. *Ib.*

13. **Brig "General Armstrong"—Claim of Samuel C. Reid, jr.**—Upon the case stated: *Advised* that Samuel C. Reid, jr., is not entitled to receive the unpaid balance lying in the Treasury for the benefit of the owners and crew of the brig *General Armstrong*. 17 Op. 590.

14. **Same.**—As to the owners, the assignment by them to Samuel C. Reid, sr., dated the 12th of September, 1835, created, in legal effect, a personal trust in the assignee for the benefit of the owners as to one-half the claim. The instrument contains no grant of power to the assignee to transfer this trust to another, and therefore the assignment of Reid, senior, to Reid, junior, was wholly without effect in so far as it attempted to devolve the trust from the one to the other. *Ib.*

15. **Same.**—As to the officers and crew, with the exception of the captain of the brig (Reid, senior, as to whom there is no question), Reid, junior, does not hold any express grant of authority to receive their shares of the money, and no authority in that behalf can be implied from their conduct. *Ib.*

16. **Same.**—The utmost that Reid, junior, can claim as to them is to be compensated out of their part of the fund, on the principle that no man shall enrich himself at the cost of another—the principle on which courts of equity proceed in charging a fund in which a number are interested with a reasonable allowance for the counsel of the energetic few who have produced the funds. *Ib.*

REAFFIRMED, 17 Op. 600.

17. Under the power conferred by the act of May 1, 1882 (22 Stat. 697), the Secretary of State has no authority to pass upon the claim of Mr. Reid to be reimbursed expenses incurred by him as agent in the prosecution of the claims of the "captain, owners, officers, and crew" of the brig *General Armstrong*. 17 Op. 626.

18. The claim of Mr. S. C. Reid, jr., on account of services rendered as agent or attorney for the "owners, captain, officers, and crew" of the brig *General Armstrong* were heretofore considered, adjudicated, and liquidated by the Secretary of State. 19 Op. 32.

19. **Same.**—The amount of money expended by Mr. Reid as agent in the service of his prin-

cipals was as much an element to be considered in fixing his compensation as the time and skill given to their cause, and it is to be assumed that the compensation allowed was intended to cover money thus expended. *Ib.*

20. *Same.*—If, as a matter of fact, this is not true, and a proper showing for reopening the question had been made at the proper time, the decision might have been reviewed. *Ib.*

21. *Same.*—Control of the fund was the only possible ground for any adjudication by the Secretary of State of Mr. Reid's right in it, and since four-fifths of the fund has been distributed, jurisdiction over this right has now been lost. *Ib.*

22. *Same.*—If, however, any good ground exists for reopening the former adjudication, a claim by Mr. Reid, jr., for pro rata payment out of the balance of the fund, or any increase in the allowance to him, might be considered. *Ib.*

23. *Reid claim.*—The Secretary of State is not required to make payment or recognize the claim of S. C. Reid as administrator of the estate of Henry Coit, one of the claimants to the *Armstrong* fund, which administration was obtained upon an erroneous statement that the estate owed him a sum equal to one-half of Coit's share of a fund remaining in the hands of the State Department, for the reason that Reid has been paid in full, and that his claim is barred by the statute of limitations, and precluded from recovery by the decisions of the State Department. 20 Op. 372.

24. *Same.*—The United States, as trustee for the true owner, or as the *ultima haeres*, is entitled to be heard in the disposition of the amount claimed, and should intervene by way of suggestion to the court that the letters of administration be vacated and set aside. *Ib.*

25. The Secretary of the Treasury can not apply any part of the unexpended balance of the appropriation made by the act of May 1, 1882 (22 Stat. 697), for the relief of the officers and crew of the U. S. brig of war *General Armstrong*, to the payment of the claim of Samuel C. Reid, jr., for expenses and charges incurred in the recovery of said amount, notwithstanding the provisions of the act of March 2, 1895 (28 Stat. 843), authorizing such payment. 21 Op. 154.

26. *Same.*—Directions given as to proper method of stating account with owners, etc., of

the U. S. brig of war *General Armstrong*, under the acts of May 1, 1882 (22 Stat. 697), and March 2, 1895 (28 Stat. 843). *Ib.*

27. The claim of Samuel C. Reid, jr., against the United States, growing out of the destruction of the brig *General Armstrong*, fully considered, and the conclusion expressed in the opinion of April 9, 1895 (21 Op. 154), that said Reid was not entitled to the amount demanded. Held to be erroneous. 21 Op. 523.

28. *Same.*—Under the act of March 2, 1895 (28 Stat. 843), the unexpended balance of the appropriation made to satisfy the claims growing out of the destruction of the brig *General Armstrong* should be used to reimburse S. C. Reid, jr., to the extent that the vouchers on file in the State Department show that he has made expenditures or disbursements on this account. *Ib.*

29. *Cutting of cable at Manila.*—There is no ground to support the claim for indemnity of the British Eastern Extension Australasia and China Telegraph Company for cutting the cable at Manila during the war with Spain. 22 Op. 315.

30. *Same.*—There is no objection to the submission to Congress of the claim of the British Cuba Submarine Telegraph Company for damages by our vessels occurring during the hostilities with Spain. 22 Op. 654.

EADS CONTRACT. See NAVIGABLE WATERS. II, b.

#### c. *Indian Depredation and Indian War Claims.*

31. Payments of Indian depredation claims are not payments for the benefit of the Osage Indians within the meaning of section 12 of the act of July 15, 1870, and can not be authorized by the President under its terms. 21 Op. 131.

32. The same considerations apply in the case of the Ute Indians under the act of June 15, 1880. *Ib.*

33. The President is not charged with any power or duty of approval or disapproval respecting the payments of Indian depredation judgments from annuities and property of Indians or from appropriations on their account, but all authority and discretion in the premises are vested in the Secretary of the Interior. *Ib.*

34. *Indian war claims.*—The act of March 2, 1861 (12 Stat. 198), entitled "An act to pro-

vide for the payment of expenses incurred by the Territories of Washington and Oregon in the suppression of Indian hostilities therein in the year 1856," is not an amendment of the act of March 3, 1849 (9 Stat. 414), but special, independent legislation, and none the less so because it adopts by reference certain provisions of the act of 1849. 20 Op. 152.

35. **Claims for horses lost in the Indian war of 1855 and 1856**, which were filed in the office of the Third Auditor of the Treasury during the year 1890 and allowed as meritorious, are barred by the act of March 3, 1873 (17 Stat. 500), not having been presented by the end of the fiscal year 1874. *Ib.*

d. *French Spoliation Claims.*

36. **Assignment—Payment—Duty of the Secretary of the Treasury.**—It is the duty of the Secretary of the Treasury under the act of March 3, 1899 (30 Stat. 1191), making appropriation for the payment of certain French spoliation claims, to determine before payment whether or not these claims are "held by assignment or owned by any insurance company." That duty is not altered by reason of the receipt of certificates of the Court of Claims issued under the authority of that act. 23 Op. 179.

e. *Of States.*

37. **Claim of Kansas—Sale of Indian lands.**—The State of Kansas is not entitled, under the third section of the act of January 29, 1861 (12 Stat. 127), to 5 per centum of the proceeds of the sales of the Indian lands in that State, which proceeds the United States, as a consideration for the extinguishment of the Indian title, agreed to receive, hold in trust, and pay over to the Indians. 19 Op. 117.

38. **Same.**—The intent of the compact was that the United States should pay to the State 5 per centum of the net moneys which the Government, in its own right, received from the sale of public lands. *Ib.*

39. **Same.**—The provision in the act of March 2, 1889 (25 Stat. 921), for payment to the State of Kansas of \$43,790.32 on account of 5 per centum fund arising from the sale of public lands in said State, precludes all inquiry on the part of the accounting officers of the Treasury as to the legality and justness of

the claim. It is their duty to allow and certify the claim for that amount, "as per decision of the First Comptroller of the Treasury of date May 6, 1880, and as stated by the Commissioner of the General Land Office." 19 Op. 362.

40. **The claim of the State of Massachusetts for reimbursement of expenses incurred in the payment of State militia called out by the governor, at the request of the military authorities of the United States, to aid in suppressing the "draft riots" in the city of Boston, is allowable under section 16 of the act of March 3, 1863 (12 Stats. 734), and the regulations prescribed by the President agreeably thereto, as an expense connected with the enrollment and draft authorized by that act.** 19 Op. 537.

41. **Same—Examination.**—This claim is also within the scope of the act of July 27, 1861 (12 Stat. 276), and the supplemental resolution of March 8, 1862, No. 16 (12 Stat. 615), and may properly be examined and adjusted by the accounting officers of the Treasury under the provisions thereof. *Ib.*

42. **The claim of the State of New York for reimbursement of the interest paid by that State on money borrowed and expended in enrolling, subsisting, clothing, etc., its troops employed to aid in the suppression of the rebellion is not allowable under the provisions of the act of July 27, 1861 (12 Stat. 276).** 17 Op. 595.

43. **Same.**—To construe the provisions of that act so as to include a claim for interest thus paid would be giving them a meaning much broader than that which has in practice been given other legislation of like character, or than seems to be warranted by any sound rule of interpretation. *Ib.*

44. **Claim of Pennsylvania.**—Upon consideration of the facts set forth in the opinion: *Held* that the settlement of the claim of the State of Pennsylvania for reimbursement of funds expended for payment of militia in the service of the United States, authorized by the act of April 12, 1866 (14 Stat. 32), was a matter intrusted by that act to the Secretary of War, and that the award which was made by the Secretary in favor of the State on June 16, 1866, must be treated as *res adjudicata* and binding upon his successors. But *held, further*, that if an error appear in the settlement which is merely clerical in its character, or

which involves a matter of computation only, the Secretary of War may now reopen the same to the extent of rectifying such clerical error, but no further. 16 Op. 489.

**45. Same—Reexamination.**—Where a resolution of the Senate (dated Jan. 10, 1889) directed the Secretary of the Treasury "to reexamine and audit the claim of the State of Pennsylvania for money expended in 1864, for which reimbursement was provided by act of April 12, 1886," and it appeared by that act the claim was required to be "examined and settled by the Secretary of War," by whom this duty had been discharged: *Held* that the Secretary of the Treasury has not sufficient authority, under said resolution, to reexamine the claim in such sense as would make of the reexamination an audit, adjudication, or settlement thereof. 19 Op. 385.

**46. Same.**—A resolution of one house of Congress can not empower the head of a Department to reexamine and audit a claim which by statute is required to be examined and settled by the head of another Department. *Ib.*

*See also* 34.

*f. Assignment.*

**47. Assignment of certificates given by the Superintendent of the Census.**—An order may be made by the Secretary of the Interior directing payment of the certificates given by the Superintendent of the Census in cases where such certificates are assigned in strict conformity to section 3477, Revised Statutes. 17 Op. 266.

**48. The provisions of section 3477, Revised Statutes, declaring null and void transfers and assignments of claims against the United States, and powers of attorney, etc., for receiving payment thereof, do not apply to undisputed claims, or any claim about which no question is made as to its validity or extent.** 17 Op. 545.

**49. Same—Assignment of part of contract price for materials furnished.**—Where a contract was made for roofing a court-house at a fixed price, and a power of attorney given to receive a part of such price as security for material purchased by the contractor: *Advised* that the power was not affected by section 3477, as no doubt existed concerning the right of the contractor to receive the amount so secured. *Ib.*

*See also* I, g, Payment.

**50. An assignment of an indebtedness admittedly due by the United States is not prohibited by section 3477, Revised Statutes.** (17 Op. 545, approved). 21 Op. 75.

**51. A disbursing officer of the United States holding a treasury draft payable to the order of the original contractors should not deliver it to a receiver appointed by a State court in an action between contesting claimants.** *Ib.*

**52. Section 3477, Revised Statutes, with reference to the assignment of claims, applies only to such claims as require allowance by some accounting officer, an ascertainment of the amounts due thereon, and the issuance of a warrant for their payment.** 22 Op. 637.

**53. Checks of disbursing officers of the Government drawn upon the public Treasury or an assistant treasurer of the United States may be properly indorsed and transferred by either the payee, indorsee, or by an agent of either, acting as such under a power of attorney from such payee or indorsee.** *Ib.*

**54. The head of a Department is prohibited by section 3477, Revised Statutes, from cooperating with a contractor having a balance due him in the Treasury, in assigning this balance to an outsider before the issuing of a warrant or warrants for payment of the amount proposed to be assigned.** 20 Op. 578.

*See also* CONTRACTS, III.

*g. Payment.*

**55. Payment to a judgment creditor of a claim against the Government in favor of the judgment debtor, if made without the consent of the latter, is unauthorized by law.** 17 Op. 675.

**56. Where an act of Congress in making appropriation for the payment of a claim, incorrectly stated an initial letter in the name of the claimant: *Advised* that the claim may be paid provided its identity with that provided for in the act be clearly established.** 18 Op. 501.

**57. Eads claim.**—Payment of amount due the estate of James B. Eads, deceased, for services in connection with the improvement of the South Pass of the Mississippi River, may lawfully be made to James F. How and Estill McHenry, the executors and trustees under his will, if the certificate of the engineer officer in charge shows satisfactorily the performance of the services. 18 Op. 604.

**58. Payment of judgment of Court of Claims.**—Where a judgment against the United States was recovered in the Court of Claims, and a stipulation was made, which is of record in the case, that neither the plaintiff nor the defendant would take an appeal from such judgment: *Advised* that there is no legal objection to payment of the judgment before the expiration of the ninety days allowed by statute for taking an appeal. 19 Op. 281.

**59. To bondsmen under power of attorney.**—Where a contractor with the Quartermaster's Department failed to perform certain work and an arrangement was effected whereby his bondsmen should take charge of and complete the work, the contractor executing and delivering to them a power of attorney by which they were authorized to receive and receipt for the money due on the contract: *Advised* that the Department may recognize this power of attorney, and that payment to the bondsmen upon their receipted vouchers thereunder will discharge the Government 19 Op. 239.

**60. Payment to parties other than named in the act, or their executors or administrators.**—A proper construction of the last clause of the act of March 3, 1891 (26 Stat. 1445, 1456), for the allowance of certain claims for stores and supplies taken and used by the United States Army as reported by the Court of Claims under the provision of the act of March 3, 1883 (22 Stat. 485), known as the Bowman Act, does not warrant the making of a Treasury draft payable or deliverable to any other parties than those named in the act or to their executors or administrators. 20 Op. 115.

**61. Payment of claim where contract was canceled.**—The Secretary of War has power to settle and pay from the appropriation for the relief of people in the Yukon River region, the claims of certain contractors under a contract entered into with the Secretary of War pursuant to the act of December 18, 1897 (30 Stat. 226) for the transportation of supplies, the expedition having been abandoned by the Secretary because found to be unnecessary. 22 Op. 437.

**62. Same.**—Unless authorized by Congress the head of a Department has no power to adjust and pay claims for unliquidated damages, even when arising from the breach of a contract, except where such claims are for work and labor done or materials furnished under

a contract silent as to price and the amount thereof unliquidated. *Ib.*

#### *h. Miscellaneous.*

**63. Interest on claim not allowable.**—The decision of the Secretary of the Interior of July 27, 1877, upon the claim of Redick McKee, made under the act for the relief of the latter, approved March 3, 1877, viz, that the claimant was entitled to be reimbursed the money paid out by him as interest on money borrowed for the Government, is as far as the Secretary was authorized to go, and an allowance of interest on the amount so paid out would have been unwarranted. 17 Op. 315.

**64. Same.**—It is a general rule that interest is not allowable on claims against the Government. The exceptions to this rule are found only in cases where the demands are made under special contracts, or special laws, expressly or by very clear implication providing for the payment of interest. *Ib.*

**65. Same.**—In view of the decision referred to, the claim should now be treated as *res judicata*. *Ib.*

#### INTEREST ON JUDGMENT OF THE COURT OF CLAIMS. See COURTS, II, d.

**66. Prosecution of claims against United States by an assistant attorney for the District of Columbia.**—*Advised* that an assistant attorney of the District of Columbia is not an officer of the Government or of the United States within the provisions of sections 1782 and 5498, Revised Statutes, prohibiting such officers from acting as agents or attorneys for prosecuting any claim against the United States, etc. 18 Op. 161.

**67. By employees of the Executive Departments.**—Section 190, Rev. Stat., prohibiting employees of any of the Executive Departments from prosecuting certain claims against the Government for two years after the termination of their employment, applies to all claims which were pending in any of the Departments while the employee was in the employ of the Government. 20 Op. 695.

**68. Same.**—That section applies to examiners of the Department of Justice, being persons receiving regular employment who take oath of office and have power to administer oaths to witnesses, although they hold no office known to the statute law and are employed



and paid under a general appropriation for the detection of crime. *Ib.*

**69. Same.—By former officer of Civil Service Commission.**—The inhibitions contained in section 190, Rev. Stat., respecting the prosecution of claims against the United States, are not applicable to the United States Civil Service Commission, its officers, clerks, or employees, said Commission not being comprehended within the term "Department" as used in that section. 25 Op. 6.

**70. Same.**—Mr. A. R. Serven, formerly chief examiner of the United States Civil Service Commission, if not otherwise disqualified, is entitled to be enrolled as an attorney for the prosecution of claims against the United States before the Treasury Department. *Ib.*

**71. Claimant a participant in the rebellion.**—A naval officer in 1860 became entitled to a share in the proceeds of a captured slaver, the amount of which was certified to the Treasury Department by the Secretary of the Navy, but remains unpaid, and in 1861 resigned his commission and entered the Confederate service. *Held* that by force of the joint resolution of March 2, 1867 (sec. 3480, Rev. Stat.), payment of such share can not now be made, notwithstanding the President's proclamation of amnesty of December 25, 1868; and that to authorize its payment an act of Congress is necessary. 18 Op. 421.

**72. Erroneous payment by master of a vessel to United States consul for clothing furnished by him to wrecked crew.**—The owners of an American vessel wrecked on the South Pacific Ocean, whose master paid the United States consul at Apia for clothing supplied the crew, out of the wages due the crew, they having subsequently recovered judgment for their wages in a United States court, have no valid claim against the United States for the money paid by the consul. The remedy, if any, is against the consul and the sureties on his bond. 19 Op. 22.

**73. Same.**—The United States is not liable to its citizens for the consequences of the wrongs or shortcomings of its officers. *Ib.* (24.)

**74. Armor plate royalty.**—The Navy Department may rightfully withhold its approval of the voucher providing for the payment to the Carnegie Steel Company of the sum of \$8,024.45, claimed as royalty for the use of

the Harvey process in the manufacture of armor plate for naval vessels, under the contract of 1898, until the right of the Harvey Steel Company to demand and collect from the Government a royalty for the use of the same process is determined in the suit pending in the Court of Claims. 23 Op. 422.

**75. Same.**—The Secretary of the Navy entered into a contract with the Carnegie Steel Company for the furnishing of armor plate, the contract providing that if the Carnegie Company should be "required" to pay royalty for the use of the Harvey face-hardening process in the manufacture of armor plate under its contract, the United States would reimburse it for the amount so paid. The Carnegie Company, by reason of its contract with the Harvey Company, was estopped from denying the validity of the Harvey patent. It used, as it is claimed, the Harvey process in the manufacture of the armor plate, and, having paid the royalty thereon, presents its claim for reimbursement. The Government denies the validity of the Harvey patent and contends that no distinctive feature of the Harvey patent was used. A suit is pending in the Court of Claims which will determine these questions: *Held* (1) That if the Harvey patent be valid it may properly be urged that the Carnegie Company, being estopped from denying the validity of the patent, was therefore "required" to pay the royalty; (2) that the Secretary of the Navy should withhold his approval of the claim until the question of the right of the Harvey Company to collect royalty from the Government has been judicially determined in the pending suit; (3) the claim of the Bethlehem Steel Company for reimbursement for royalty paid, being based upon a contract similar to that of the Carnegie Company, the Secretary should likewise withhold his approval of the claim of the Bethlehem Company. 23 Op. 495.

POWER OF ATTORNEY. See POWER OF ATTORNEY.

AUDITING ACCOUNT FOR MAIL TRANSPORTATION. See POSTAL SERVICE, III, c, 100.

CHECKS, ASSIGNMENT. See I, f.

DRAWBACK. See CUSTOMS LAW, VI, b.

DIRECT TAXES. See DIRECT TAXES.

IMPRESSMENT. See CLAIMS I, b, 11, 12.

INDIAN CLAIMS. See INDIANS, V.

## II. Against the United States—Subjects of Foreign Powers.

76. **Spanish subjects—Treaty of 1819—Interest not allowable.**—The United States are under no obligation to allow interest on the awards made by the Florida judges in cases of claims of Spanish subjects under the ninth article of the treaty with Spain of 1819. 17 Op. 644.

77. **Same.**—Review of the legislation passed and proceedings had thereunder in execution of the ninth article of the treaty with Spain of 1819 respecting the claims of Spanish subjects growing out of the operations of the American army in Florida. 17 Op. 680.

78. **Same.**—The Government of the United States has done all that it was bound to do under that article, and has fully executed the same; hence no liability whatever arising under the treaty now rests upon it. *Ib.*

79. Where an award was made by the American and Mexican Claims Commission in favor of a resident of Mexico who has deceased leaving a will which has been duly probated in the proper forum in that country, leaving all his estate to his wife and their only son, a minor, the latter being named executor, and the widow having been appointed by the court to represent the executor, her son, during his minority, payment of the award may properly be made to the widow in this country, provided there are no adverse claims based on a conflicting grant of administration here in the interest of domestic creditors. 18 Op. 99.

80. **Claims for seizure of sealing vessels.**—The British Government presents a claim for damages on account of the seizure by American cruisers in the North Pacific Ocean and Bering Sea of the British sealing schooners *Wanderer* and *Favorite* for violation of the laws for the preservation of fur seals, having on board prohibited and unsealed firearms, together with large numbers of seal skins. The schooners were delivered to a British naval officer with a written statement of the facts upon which the seizures had been made, but which did not specifically assert that seals had been taken contrary to law, which officers, without in anywise invoking the action of the courts, released them, having reached the conclusion, after investigation and upon legal advice, that no case could be made out

against them: *Held*, there is no liability for damages. 21 Op. 234.

81. **Same.**—There is nothing in the British statutes or orders and instructions issued for their execution which requires any formal charge by officers making seizure of a vessel. An indorsement of the grounds upon which it was seized on the certificate of the vessel is required in order to enable the vessel to proceed to port for trial. *Ib.*

82. **Same.**—The mode provided by the Bering Sea Award act for dealing with vessels seized is to subject them to legal proceedings in the British courts. Delivery to the naval authorities of the country to which the vessel belongs, in place of delivery to its judicial authorities, was merely for convenience and not for the purpose of dispensing with legal proceedings or having a trial by such naval authorities instead. *Ib.*

83. **Same.**—The naval officer to whom delivery is made of a vessel seized under the provisions of this act has no power to review or investigate the seizure. *Ib.*

84. **Same.**—While the acts of both countries are directed only against cases of unlawful seal fishing, they are not limited to the seizure of vessels actually caught in the act, for in all other cases the action must depend upon the evidence and indications. *Ib.*

85. **Same.**—Where reasonable grounds for the seizure of a vessel are shown, there is no liability, although the court has discharged the vessel. *Ib.*

86. **Same.**—The Attorney-General adheres to the views of his predecessors (21 Op. 234) concerning claims growing out of the detention of the British vessels *Wanderer* and *Favorite*, for supposed violations of article 6 of the regulations concerning the seal fisheries, enacted into law by the Governments of the United States and of Great Britain after the award of the Paris arbitration tribunal, forbids the use of firearms excepting outside Bering Sea, during the open season. 22 Op. 64.

87. **Same.**—The presence of a shotgun upon a sealing vessel was made a violation of article 6 of the regulations concerning the seal fisheries by Congress, but such principle does not apply to British vessels in the absence of a British statute to the same effect. In the absence of such British statute it was improper to seize a British vessel unless there

was good reason to believe she had been actually guilty of violating article 6. *Ib.*

### III. Against Foreign Governments.

88. The imprisonment of a citizen of the United States by an officer of a foreign government without judicial process or allegation of a violation of law, but because of an alleged disrespect of such official's authority, is such an injury as to render such government liable in damages. 22 Op. 32.

89. Loss of time, absence from business, personal humiliation, and bodily and mental suffering resulting from a wrongful arrest and imprisonment are, under the laws of civilized countries, grounds for compensatory damages, the amount being determined in cases of this character through negotiations. *Ib.*

### IV. Against Hawaii.

90. Certain claims of foreign subjects against Hawaii which accrued prior to annexation and which have been presented to the Department of State should properly be presented to, considered, and paid by the Hawaiian government. All such claims should first be received by the Department of State, through diplomatic channels, and then be transmitted to the government of Hawaii for adjustment. 22 Op. 584.

91. Similar claims of citizens of the United States may be presented directly to the Hawaiian government, or such other proceedings be taken in court as the municipal laws of Hawaii allow. *Ib.*

92. Those and similar questions may be submitted by the Department of State to the Court of Claims for determination, but the Attorney-General can not consistently advise such expenditure. *Ib.*

### V. Claims of the United States.

93. Compromise of claims in favor of the United States.—The fines imposed after a verdict of guilty of the statutory misdemeanor of allowing certain pauper immigrants to land after being ordered to detain them, are not a

claim in favor of the United States within the meaning of section 3469, Revised Statutes, and can not be compromised under that statute. 20 Op. 685.

94. Compromise of claims.—The "agent" referred to in section 3469, Revised Statutes, which provides for the compromise of claims in favor of the United States, is one who has special charge of a claim for purposes of collection or enforcement in the same way that a district or special attorney has, though he need not possess their professional character. 21 Op. 361.

95. Same.—The Comptroller of the Treasury is not an "agent" within the meaning of section 3469, Revised Statutes. *Ib.*

96. The power to compromise claims in favor of the United States, which includes judgments on recognizances, is vested by law in the Secretary of the Treasury with respect to all claims save those arising under the postal laws. 21 Op. 494.

97. Whether the statute of limitations does or does not bar a claim on behalf of the Government is a judicial question to be determined by the courts and not by the Attorney-General. 21 Op. 557.

98. Where a judgment recovered against the United States in the Court of Claims has been paid, and is subsequently set aside on the ground of fraud, the money can be recovered, if at all, because of the fraud and not because it is property or proceeds thereof belonging to the United States and now withheld, as contemplated by section 3755, Revised Statutes. 22 Op. 411.

99. The Secretary of the Treasury has no authority under section 3755, Revised Statutes, to enter into a contract with a private individual for the collection of such money. *Ib.*

100. The North American Commercial Company is liable to the United States for interest upon the several sums overdue for the years 1894-1897, inclusive, on account of taxes, rental, and bonus under its lease of the Pribilof Islands from the United States. 22 Op. 172.

101. Same.—Where money is due and payable on a contract at a specific time and is withheld, the creditor is entitled to demand and receive interest at the rate prevailing in the forum where suit is brought, except as against the Government of the United States and sovereign States. *Ib.*

**102. Same.**—In an action for use and occupation or for mesne profits, where the recovery is of a sum in the nature of rent, interest is allowed on each annual sum from the end of the year. *Ib.*

**103. Same—Compromise of claim reduced to judgment and collectible.**—While the Secretary of the Treasury has no authority under section 3469, Revised Statutes, to compromise a claim in favor of the United States which has been reduced to judgment, affirmed by the highest court, and which is clearly collectible, that section confers upon him the authority to compromise all other claims in favor of the United States except those arising under the postal laws. 23 Op. 631.

**104. Same.**—The claim of the United States against the North American Commercial Company, for interest, involving disputed questions of law and fact, is clearly one subject to compromise. *Ib.*

**ALABAMA CLAIMS.** *See ALABAMA CLAIMS COMMISSION.*

**ARBITRATION.** *See POSTAL SERVICE, III, c, 99.*

**COMPROMISE OF CLAIMS.** *See TREASURY DEPARTMENT, 44-53.*

**COURT OF CLAIMS.** *See COURTS, II, d.*

**DISTRICT OF COLUMBIA, CLAIMS AGAINST.** *See DISTRICT OF COLUMBIA, IX.*

**DISBURSEMENT OF APPROPRIATIONS FOR CONSTRUCTION OF PUBLIC BUILDINGS.** *See PUBLIC BUILDINGS.*

**FREIGHT BY BOND AIDED RAILROADS.** *See RAILROADS, II, a.*

**INDIAN CLAIMS. DELAWARE INDIANS—ATTORNEYS' FEES.** *See INDIANS, V, 137-139.*

**LOYAL CREEK CLAIMS.** *See INDIANS, V, 135-136.*

**LAND CLAIMS.** *See PUBLIC LANDS, XII.*

**POWER OF ATTORNEY.** *See POWER OF ATTORNEY.*

**PROSECUTION OF CLAIMS AGAINST UNITED STATES.** *See CLAIMS, I, h.*

**RECONSIDERATION OF CLAIM FOR INTERNAL REVENUE TAXES.** *See INTERNAL REVENUE, I, 4, 5.*

**TRANSMISSION OF GENERAL DISPATCHES OVER BOND AIDED RAILROADS.** *See RAILROADS, II, d, 35.*

**OF WEAIGHER IN CUSTOMS SERVICE FOR COMPENSATION DURING PERIOD OF SUSPENSION.** *See CUSTOMS LAW, II, 56.*

## CLASSIFICATION.

**OF CLERKS.** *See POSTAL SERVICE, II, c; CIVIL SERVICE, III, b.*

**OF IMPORTED MERCHANDISE.** *See CUSTOMS LAW, IV, d.*

**CLASSIFICATION DECISIONS OF THE BOARD OF GENERAL APPRAISERS.** *See CUSTOMS LAW, II, a, 16-19.*

## CLEARANCE.

*See SHIPPING, I, f; CUSTOMS LAWS, IX, j.*

## CLERKS.

**CLASSIFICATION.** *See POSTAL SERVICE, II, c; CIVIL SERVICE, III, b.*

**DETAIL OF REGISTRY CLERK TO WHITE HOUSE.** *See POST-OFFICE DEPARTMENT, 13.*

**DETAIL OF CLERKS TO CIVIL SERVICE COMMISSION.** *See CIVIL SERVICE, II, e.*

**RETURN OF CLERKS DETAILED TO CIVIL SERVICE COMMISSION.** *See CIVIL SERVICE, II, e.*

**REINSTATEMENT OF FORMER CLERK.** *See CIVIL SERVICE, III, f.*

*See also EXECUTIVE DEPARTMENTS, II, c; and the several Executive Departments individually.*

## CLOQUET RIVER.

*See NAVIGABLE WATERS, III, b.*

## CLOUD ON TITLE.

*See SHILOH BATTLEFIELD.*

## COAL.

**DRAWBACK.** *See CUSTOMS LAW, VI, b, 349-350.*

**COAL MINES.** *See INDIANS, III, f.*

## COAL CONTRACT.

*See POST-OFFICE DEPARTMENT, 4, 5.*

**COAST AND GEODETIC SURVEY.**

The shipping commissioners act of June 7, 1872 (17 Stat. 262), now embraced by Title 53, Merchant Seamen, Revised Statutes, has no application to seamen employed on vessels engaged in the service of the Coast and Geodetic Survey. 19 Op. 182.

**COASTING TRADE.**

See SHIPPING, I, f, 30; VESSELS, 3.

**CŒUR D'ALENE INDIAN RESERVATION.**

RIGHT OF WAY ACROSS. See INDIANS, II, a, 47.

**COIN.**

See BANKS II, 16-18; CUSTOMS LAWS, IV, a, 180; TREASURY DEPARTMENT, V.

**COLLECTION DISTRICTS.**

See CUSTOMS LAW, I, b.

**COLLECTORS OF CUSTOMS.**

A collector of customs has the right to enforce his exclusion of certain Chinese persons of alleged American birth who entered the United States, were deported to Canada, but subsequently returned to the United States, by again returning them to Canada. 21 Op. 614.

See also CUSTOMS LAWS, II, b; CHINESE, I, c, 25, and V, 118; and PUBLIC BUILDINGS, 28-31, 34.

**COLLECTOR OF THE PORT.**

If there be no collector of the port at Galena, Ill., and all the duties of that office are imposed upon the surveyor of customs, then his acts done in the performance of the duties

and functions of the office of collector of the port are as valid and effective as if done by a collector of the port. 20 Op. 700.

**COLLISIONS AT SEA.**

See NAVIGATION, 2.

**COLORADO.**

See PUBLIC LANDS, IX, 33.

**COLUMBIA INSTITUTION FOR THE DEAF AND DUMB.**

See DISTRICT OF COLUMBIA, IV.

**COMMERCE.**

1. Commerce is not restricted to the purchase and sale of commodities, but includes also navigation, intercourse, and the reception, transportation, and delivery of passengers and freight by land and water, and also the means and instrumentalities used in such commerce. 22 Op. 501, 647.

2. Arms—China.—The mere shipment or exportation of arms, in the way of commerce, to a country in which there are insurrectionary movements, does not seem to be prohibited by the statutes of the United States or by the law of nations. 24 Op. 25.

See also INTERSTATE COMMERCE; NAVIGATION; NEUTRALITY.

**COMMERCIAL CABLE COMPANY.**

See CABLES, 6-8.

**COMMERCIAL PACIFIC CABLE COMPANY.**

See PHILIPPINE ISLANDS, 26.

**COMMISSION TO REVISE AND CODIFY THE LAWS OF THE UNITED STATES.**

**Authority.**—In authorizing the Commission to Revise and Codify the Laws of the United States of a permanent and general nature in force at the time when the same shall be reported, Congress invested the Commission with the discretion not only to codify and revise, but also to determine what existing laws are of a permanent and general nature. 25 Op. 584.

**COMMISSION TO THE FIVE CIVILIZED TRIBES.**

The Attorney-General's opinion can not be asked by the Secretary of the Interior upon questions relating only to the duties of the Commission to the Five Civilized Tribes appointed under section 16 of the act of March 3, 1893 (27 Stat. 645), as he, the Secretary, has no control over the proceedings of the Commission. 20 Op. 724.

**COMMISSIONER GENERAL TO PARIS EXPOSITION.**

*See* EXPOSITIONS AND FAIRS, 31, 32.

**COMMISSIONER OF AGRICULTURE.**

*See* DEPARTMENT OF AGRICULTURE, II, 14.

**COMMISSIONERS OF EMIGRATION, NEW YORK.**

*See* IMMIGRATION, I, 19.

**COMMISSIONER OF GENERAL LAND OFFICE.**

*See* DEPARTMENT OF THE INTERIOR, III, c; INDIANS, IV, 123; PUBLIC LANDS, IV, 10.

**COMMISSIONER OF INDIAN AFFAIRS.**

*See* DEPARTMENT OF THE INTERIOR, II, c.

**COMMISSIONER OF INTERNAL REVENUE.**

*See* INTERNAL REVENUE, I.

**COMMISSIONER OF NAVIGATION.**

*See* NAVY DEPARTMENT, II, b.

**COMMISSIONER OF PATENTS.**

*See* DEPARTMENT OF THE INTERIOR, III, a.

**COMMISSIONER OF PENSIONS.**

*See* DEPARTMENT OF THE INTERIOR, III, b; PENSIONS, III, and IV, 70-72.

**COMMISSIONS.**

FOR PURCHASE OF UNITED STATES BONDS. *See* TREASURY DEPARTMENT, VI.

**COMMON CARRIERS.**

1. Under the immediate transportation act of June 10, 1880 (21 Stat. 173), the Secretary of the Treasury may require common carriers desiring to avail themselves of its privileges to file bonds to accept and transport within a definite fixed period of time all merchandise offered under the act. 21 Op. 369.

2. Section 3709, Revised Statutes, does not apply to seals or fastenings used to secure packages while being transported in bond, which are paid for and owned by common carriers. 21 Op. 304.

**COMMON LAW.**

There are no common law offenses against the United States. 20 Op. 590.

**COMMUNICATIONS TO CONGRESS.**

*See* EXECUTIVE DEPARTMENTS, II, b.

**COMMUTATION OF QUARTERS.**

*See* ARMY, II, d, 3.

**COMPENSATION.**

OF ANY PARTICULAR OFFICER OF THE GOVERNMENT. *See* APPROPRIATE HEADING FOR THAT OFFICER.

ARMY OFFICERS. *See* ARMY, 153-187.

ARMY CHAPLAINS. *See* ARMY, 157, 158.

DISBURSEMENT OF APPROPRIATIONS FOR ERECTION OF PUBLIC BUILDINGS. *See* PUBLIC BUILDINGS, 26-34.

GENERAL SERVICE MESSENGERS. *See* ARMY, 26.

INSPECTORS OF CUSTOMS. *See* CUSTOMS LAW, 52-53.

INTERSTATE COMMERCE COMMISSIONERS. *See* INTERSTATE COMMERCE.

PERSONS FURNISHING EVIDENCE OF FRAUDS IN SUPPLYING NAVAL EQUIPMENT. *See* NAVY, I, 22.

SPECIAL DEPUTY MARSHALS AT ELECTIONS. *See* ELECTIONS.

TRANSPORTATION AND DELIVERY OF MAILS. *See* POSTAL SERVICE, 85-100.

WEIGHER IN CUSTOMS SERVICE. *See* CUSTOMS LAW, 56.

*See also* DIPLOMATIC AND CONSULAR OFFICERS, 1, 2, 19-26; FEES; INFORMERS; INTERNAL REVENUE, 7; NAVY, 13, 22, and II, d; NAVY YARD EMPLOYEES; SUPERVISORS OF ELECTIONS; UNITED STATES ATTORNEYS; UNITED STATES MARSHALS; UNITED STATES, II.

**COMPROMISE.**

*See* TREASURY DEPARTMENT, II, a, 44-58; INTERNAL REVENUE, III, b; CUSTOMS LAWS, IX, g; CLAIMS, V; IMMIGRATION, III, a—Contract Labor.

**COMPTROLLER OF THE CURRENCY.**

*See* TREASURY DEPARTMENT, II, e.

**COMPTROLLER OF THE TREASURY.**

*See* TREASURY DEPARTMENT, II, f.

**COMPULSORY TESTIMONY.**

*See* WITNESSES, 9-13.

**COMPUTATION OF DRAWBACK.**

*See* CUSTOMS LAW, VI, b, 376, 377.

**CONCESSIONS.**

1. A concession for the construction of a certain electric tramway in Porto Rico being inchoate and incomplete and lacking certain public action necessary to be taken by the public authorities representing the Crown of Spain before it could go into effect as a complete grant, the War Department has no authority to grant or complete such concession. 22 Op. 551.

2. Neither the President nor the War Department has power to grant a concession of the right to use the water power of the River Plata in Porto Rico. 22 Op. 546.

3. Same.—Any complete and vested right which a person had at the time the treaty of Paris took effect, to the use of the waters of the River Plata, should be respected by the United States. *Ib.*

4. Same.—If in the grant of a right or privilege the sovereign has retained any authority which may affect its untrammelled exercise and enjoyment, such right is inchoate and can be exercised only by the grace of the succeeding sovereign. *Ib.*

5. The United States Government is not the successor of the Government of Spain in Cuba, but merely an intervening power arranging the succession, and as such it can not be held to have assumed the obligations arising from or growing out of concessions granted or contracts entered into by the Spanish Government in Cuba previous to its surrender of sovereignty therein. 22 Op. 384.

6. Any inchoate rights or grants made by a municipal body in Cuba under Spanish sover-

**eighty**, which for their completion require the assent or approval of the Crown or its officers, in the absence of such assent or approval made prior to the treaty of cession, are ineffective and incomplete. 22 Op. 526.

**7. A concession in due form to construct certain tramways in the city of Habana was granted to one de la Torre in 1893**, notwithstanding the objection of a rival company, which claimed the right under a royal decree of February 5, 1859. Subsequently the same concession was advertised at public auction and sold to de la Torre, the rival company failing to bid. *Held*, the owners of the de la Torre concession have a *prima facie* right to proceed at their own risk, under the permission of the municipal authorities. 22 Op. 521.

**8. Same.—The military order of December 24, 1898, forbidding the making of any grant or concession in the future, was not intended to apply to those previously made in due form.** *Ib.*

**9. Telegraphs, cables—Cuba—The Philippines.—**The concessions secured from Spain by English telegraph companies in Cuba and the Philippines are not binding, as contracts, on the United States, Cuba, the Philippines, or other government replacing Spain; but as to the Philippine cables it does not follow from this fact that no obligation whatever exists. 23 Op. 195.

**10. Same—Interisland cables—Equitable obligation.—**There is an equitable obligation on the part of the four islands connected by cables, and on the part of the archipelago as a whole, with regard to the concession for interisland cables in the Philippines, which concession provides for an annual subsidy. *Ib.*

**11. Same—Monopoly for a certain number of years.—**With regard to two other concessions for cables, from Bolinao to Manila and from Bolinao to Hongkong, which do not call for pecuniary subsidies, but for a monopoly during a certain number of years, the equitable obligation upon the islands concerned and upon the archipelago, though less obvious, exists. *Ib.*

**12. Same—Obligation of the United States.—**It is for Congress to determine whether any such obligation exists on the part of the United States. *Ib.*

**13. Same—Disposition of the question—Philippine cables.—**In the absence of any

urgent reason for Executive action the whole matter of these equitable liabilities concerning the Philippine cables ought to be left to Congress or to the permanent Philippine government. *Ib.*

**14. Same—Similar concessions in Cuba.—**The foreign and purely temporary character of the occupation of Cuba by the United States makes it highly proper for the latter to leave the question of Cuba's equitable liability in regard to similar concessions to the permanent government of Cuba to determine. *Ib.*

**15. Telegraphs, cables—Cuba—Infringement by War Department.—**As a matter of power, it is within the legitimate function of the War Department to maintain a telegraph line between Santiago and Habana, Cuba, and to transmit private messages over it, although the transaction of business of that nature may be in conflict with the vested rights of the International Ocean Telegraph Company. 23 Op. 425.

**16. Same—War power.—**In the maintenance and operation of such line the military officers of the United States in Cuba are exercising a war power under a military occupation of territory wrested by arms from a belligerent. *Ib.*

**17. Same.—The question whether the business of the International Ocean Telegraph Company is thereby injuriously affected in contravention of its concession is one the authority to determine which is not vested in the Attorney-General.** *Ib.*

**18. Railway and telegraph, in Cuba and the Philippines.—**Opinions of July 26 and 27, 1900 (23 Op. 182, 195), holding that the concessions granted by Spain to certain railway and telegraph companies in Cuba and the Philippine Islands are not binding as contracts on the United States, Cuba, and the Philippines, or other government replacing Spain, reaffirmed. 23 Op. 451.

**19. Railway, in the Philippines.—**The provinces in the Philippine Islands through which a railroad was built in pursuance of a royal decree of April 9, 1885, and which in large measure received the benefit of said railroad, are equitably obligated to make some fair arrangement with the company as to the two-thirds of the guaranteed interest which the decree imposed upon the provinces. 23 Op. 181.



**20. Same.**—Congress will determine whether, based upon the reception of benefits from the railroad, the United States has incurred one-third or any such portion of the original indebtedness which, under the decree, was to be paid from the royal or peninsular funds in the Philippine treasury. *Ib.*

**21. Same—Authority of the President.**—As Congress has not yet determined the future permanent status of the islands, the President has authority to settle this preexisting accrued indebtedness, if he believes that the settlement can not justly and wisely be left to await action by the future government. *Ib.*

**22. Same—Obligation of the United States.**—This concession of Spain is regarded as a personal contract, binding on the parties who made it and equitably on the provinces affected thereby; but whatever obligation, if any, rests upon the United States in regard thereto, it is something different from the contract obligations, and may or may not coincide with its terms. *Ib.*

**23. Same.**—In such case the President, or, with his consent, the military government, may apply the local revenues of the provinces through which this road extends to the discharge of their equitable liability, based upon so much of the concessionary agreement as has been already executed, the amount of which liability he has authority to determine in view of all the facts and circumstances. *Ib.*

**24. Any money that might be derived by the commissioner-general of the United States to the Paris Exposition through the granting of concessions or the sale of a catalogue belongs to the United States, and should be turned into the Treasury.** 22 Op. 388.

*See also* LICENSES; INTERSTATE COMMERCE, 8.

#### CONDEMNATION.

*See* EMINENT DOMAIN; PUBLIC BUILDINGS, 2, 11, 14, 19-21; UNITED STATES, 75-80; GUAM.

#### CONFINEMENT OF CONVICT.

*See* PHILIPPINE ISLANDS, 52.

#### CONFISCATION.

The military government of the United States at Manila should return to certain claimants all property and possessions taken from them by the United States in pursuance of the order of General Otis of November 25, 1898. 22 Op. 352.

*See also* FINES, PENALTIES, AND FORFEITURES.

#### CONGRESS.

**I. In general, 1-7.**

**II. Power, 8-23.**

**III. United States Senate, 24-31.**

**IV. House of Representatives, 32-36.**

#### I. In General.

**1. Adjournment—Holiday recess.**—The dispersion of the two Houses of Congress for a definite period in pursuance to a joint resolution, as during the holiday recess, is an adjournment within the meaning of subdivision 2, section 7, of Article I of the Constitution. 20 Op. 503.

**2. Same—Approval of bills.**—It is competent for the President to approve within ten days any bill presented to him, although Congress may adjourn in the interim, not *sine die*, but for a longer period than ten days, exclusive of Sundays. *Ib.*

**3. Same.**—Should such a bill not be signed within the ten days it would probably fail to become law. Suggested, however, that the better plan would be, in case the bill does not meet with Executive approval, to return it vetoed to Congress when that body reconvenes. Its validity can then be determined by the courts. *Ib.*

**4. Accounts for transportation.**—An omission by Congress of some accounts from an act (act of Mar. 3, 1879, 20 Stat. 420) providing for the settlement of certain accounts for transportation shows that it was not the intention of Congress to make said act apply to all accounts for transportation furnished under preceding acts. 21 Op. 297.

**5. Attorney-General declines to investigate and report to Congress in regard to owners of**

**land at Great Falls, Maryland.**—In response to a resolution of the Senate directing the Attorney-General to investigate and report to that body who are the owners of the land and water power at the Great Falls of the Potomac River: *Advised* that any information on the subject found in the records of the Department would be gladly furnished the Senate, but that beyond this, it was submitted, such investigation is not within the duties of the Attorney-General as prescribed by law. 17 Op. 324.

**6. Campaign contributions.**—A Member of Congress is not an "officer of the Government" within the meaning of the provision in section 6 of the act of August 15, 1876 (19 Stat. 169), whereby "all Executive officers or employees of the United States, not appointed by the President with the advice and consent of the Senate, are prohibited from requesting, giving to, or receiving from any other officer or employee of the Government any money or property or other thing of value for political purposes," etc. 17 Op. 419.

**7. Same.**—That provision is intended to regulate the conduct of the inferior officers, etc., of the Government with respect to these and other officers, etc., in its service, as ordinarily understood. To place a construction thereon which would embrace among the latter those who are not "officers" in the common acceptance of the word, and thus enlarge the penal effect of the provision, would not be warranted by any sound rule of interpretation. *Ib.*

## II. Power of Congress.

**8. Appointing power.**—Congress can not assume the power to require the President and the Senate to exercise their appointing power. 18 Op. 23.

**9. Same.**—A bill which imposes, or attempts to impose, upon the President, a duty to appoint a person designated therein, is without any support in the Constitution. It is an assumption of an implied power which is not based upon any express power, and clearly invades the constitutional rights of the President. 18 Op. 27.

**10. A resolution of one House of Congress** can not empower the head of a Department to reexamine and audit a claim which by statute

is required to be examined and settled by the head of another Department. 19 Op. 385.

**11. Pardon—Amnesty.**—The President has the constitutional power without Congressional action to issue a general pardon or amnesty to classes of offenders. 20 Op. 330, 668.

**12. Same.**—The pardoning power of the President is not subject to legislative control. 20 Op. 330.

**13. Same.**—Congress has no power by legislation to abridge the effect of the President's pardon. 22 Op. 36.

**14. Congress alone can restore to the public domain land reserved therefrom for the use of the Navy Department.** 21 Op. 120.

**15. The power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States** is vested by the Constitution in Congress. 22 Op. 549.

**16. Congress has the right to place the control of the occupancy and use of forest reservations in the hands of the Secretary of the Interior for their preservation, and to provide that any occupancy or use in violation of the rules and regulations adopted by him shall be punishable criminally.** 22 Op. 266.

**17. Congress has the power to establish harbor lines or modify existing ones in navigable waters within the limits of a State, although such State has already established such harbor lines.** 22 Op. 501.

**18. Same.**—The power of Congress to regulate commerce includes the power to regulate the use of all means and instrumentalities used in commerce, whether on sea, navigable rivers and lakes, in harbors or on land, irrespective of whether a State has attempted to regulate the same matter or not. *Ib.* (and 647).

**19. Same.**—Whenever Congress in the exercise of its power to regulate commerce makes any rule or regulation, whether in establishing harbor lines or otherwise, such regulations necessarily supersede any that the State may have made on the same subject within its limits. *Ib.*

**20. Same.**—The fact that harbor lines have once been established is no bar to the exercise of the same power as often as the needs of commerce require. *Ib.*

**21. Congress has power to exclude aliens altogether from the United States, or to pre-**

scribe the terms and conditions on which they may come into this country. 22 Op. 353.

22. Congress has not extended the copyright laws to the Philippines, but has enacted, in setting up a separate government for those islands, that section 1891 of the Revised Statutes, extending the Constitution and applicable laws to organized Territories, is not to be in force in the Philippines. 25 Op. 25.

23. Congress may fix the hours of labor upon all the works of the United States, wherever conducted, and make the law binding upon the officers of the United States and, through the agency of contracts, upon all contractors with the United States. 25 Op. 442.

### III. United States Senate.

24. Appointment to civil office created during term for which elected.—K was elected and qualified as Senator from Iowa for a term which would expire in March, 1883. He resigned in March, 1881, to accept the position of Secretary of the Interior, which office he also resigned in the latter part of the same year. Since then, by act of May 15, 1882 (22 Stat. 64), the office of tariff commissioner was created: *Advised* that clause 2 of section 6 of Article I of the Constitution disqualifies K for appointment to such office. 17 Op. 365.

25. Senator nominated and appointed to consular position the salary of which was increased while he was yet Senator.—During the term of R as a Senator of the United States, Congress increased the salary of the minister to Mexico. On February 23, 1895, the President nominated R (whose term in the Senate would not expire until March 4, 1895) to the office in question, and, on the same day, such nomination was confirmed by the Senate. He took the oath of office on March 4, 1895, and his commission was delivered to him on the following day. *Held*,

(1) The nomination by the President and confirmation by the Senate constituted an appointment to the office in question within the inhibition of the Constitution; and

(2) Such appointment was a nullity, because in conflict with section 6, paragraph 2, Article I of the Constitution, which prohibits the appointment of a Member of Congress during the term for which he was elected, to

an office, the emoluments whereof shall have been increased during such time. 21 Op. 211.

26. Appointment during holiday adjournment.—The President is not authorized to appoint an appraiser at the port of New York during the current holiday adjournment of the Senate, which will have the effect of an appointment made in the recess occurring between two sessions of the Senate. 23 Op. 599.

27. Distinction between an appointment and a nomination.—There is no distinction between an appointment and a nomination other than the fact that the President nominates for appointment when the Senate is in session, and appoints when he fills a vacancy temporarily during the recess of the Senate. *Ib*.

28. Distinction between a recess of the Senate and an adjournment.—The recess of the Senate during which the President shall have power to fill a vacancy that may happen (Const., Art. II, sec. 2, clause 3) means the period after the final adjournment of Congress for the session and before the next session begins; while an adjournment during a session of Congress means a merely temporary suspension of business from day to day, or for such brief periods of time as are agreed upon by the joint action of the two Houses. *Ib*.

29. The confirmation of an officer nominated for promotion may be made as well by the appointment and promotion of his successor as in any other way, provided it shows the assent of the Senate to such promotion. 23 Op. 31. 23-413.

30. Nomination for advancement of deceased army officer—Approval of Senate.—The President may send to the Senate for approval of his action the names of officers on the retired list of the Army nominated by him for advancement under the act of April 23, 1904 (33 Stat. 264), after the adjournment of the last session of Congress, but who died before the convening of the present session; and upon approval by the Senate, the personal representatives of the deceased officers will be entitled to receive the advanced pay due such officers without further action by Congress. 25 Op. 312.

31. Where, however, a person is appointed to office either during a session or in a recess of the Senate, and dies before confirmation, his

personal representatives must be remitted to Congress for the payment of salary earned by such officer. *Ib.*

NUNC PRO TUNC ADVANCEMENT. *See* Navy, 34, 35.

POWER OF SUSPENSION DURING RECESS OF THE SENATE. *See* PRESIDENT, 16.

RECESS APPOINTMENTS. *See* PRESIDENT, I; OFFICE AND OFFICERS II.

#### IV. House of Representatives.

32. The question whether a Congressman can receive pay as a retired army officer is one of grave doubt which only the determination of the Supreme Court can satisfactorily settle. 20 Op. 686.

33. Soliciting political contributions.—A Member of Congress is not an "officer of the Government" within the meaning of the provision in section 6 of the act of August 15, 1876 (19 Stat. 169), whereby "all Executive officers or employees of the United States, not appointed by the President with the advice and consent of the Senate, are prohibited from requesting, giving to, or receiving from any other officer or employee of the Government any money or property or other thing of value for *political purposes*." 17 Op. 419.

34. Franking privilege.—An unseated Member has no right thereafter to send public documents through the mail free of postage, under the proviso in the first section of the act of March 3, 1879 (20 Stat. 356). 19 Op. 592.

35. Until a decision is made which unseats them, Members of Congress whose seats are contested are considered to be in all respects endowed with the same rights, powers, and privileges as other members. 21 Op. 342.

36. A cadet nominated to the Naval Academy upon the recommendation of such a Member can not be lawfully deprived of his place if he passes his examination. *Ib.*

COMMUNICATIONS. *See* EXECUTIVE DEPARTMENTS, 19, 20.

COPYRIGHT LAWS. *See* PHILIPPINE ISLANDS, 7-9.

CONSENT OF, FOR CONSTRUCTION OF BRIDGE.

*See* NAVIGABLE WATERS, III, a.

MONEY ADVANCED ON CONTRACTS WHEREIN A MEMBER OF CONGRESS IS BENEFITED. *See* CONTRACTS, VI, b, 135.

MEMBER OF CONGRESS AS SURETY ON BOND OF CONTRACTOR WITH UNITED STATES. *See* SURETY AND SURETY COMPANIES, 1.

#### CONGRESSIONAL LIBRARY.

BUILDING. *See* CONTRACTS, I, a.

#### CONSENT OF STATE.

*See* UNITED STATES, V.

#### CONSIGNMENTS.

*See* CUSTOMS LAW, 1, 2.

#### CONSPIRACY.

1. When two or more persons combine for the purpose of interfering with the passage of a train carrying the mail, and one or more of the parties does any act to effect such object, all of the parties are liable to a criminal prosecution for conspiracy under section 5440, Revised Statutes. 21 Op. 9.

2. In conspiracy cases, proof of the acts and declarations of the alleged conspirators may be introduced, although not properly admissible at the time because community of intent and design had not been established; but if received, the error may be cured by the subsequent introduction of proof of the conspiracy existing at the time the alleged declarations were made. 22 Op. 589.

3. Testimony tending to show such a relation or understanding between alleged conspirators as would be indicative of a purpose to defraud the Government by means of contracts for public works to be given out and carried on under charge of the accused would be admissible, even though it related to matters antedating the time of the particular conspiracy charged. *Ib.*

**CONSTITUTIONAL LAW.**

1. The jurisdiction of this nation within its own territory is necessarily exclusive and absolute, and is susceptible of no limitation not imposed by itself. 22 Op. 13.

2. Regulations for the forfeiture or destruction of imported prohibited articles may be so framed as to provide due process of law. 22 Op. 29.

3. Congress has no power by legislation to abridge the effect of the President's pardon. 22 Op. 36.

4. "Due process of law" does not necessarily mean a judicial proceeding.—When property is of trifling value, and its destruction is necessary to effect the object of a valid law, it is within the power of the legislature to order its summary destruction without obtaining a forfeiture by judicial proceedings. 22 Op. 70.

5. "Due process of law."—Trial by a court not legally constituted is not a trial which can be said to be "due process of law." 22 Op. 137.

6. The constitutional requirement with reference to uniformity in the imposition of taxes, imposts, etc., is satisfied when a particular impost is uniform upon all subjects of the same kind or class. 22 Op. 192.

7. Congress can not delegate its legislative power so as to authorize an administrative officer, by the adoption of regulations, to create an offense and prescribe its punishment. 22 Op. 266.

8. Under the power conferred upon Congress by the Constitution to regulate commerce, the United States has the right to control all structures and works which interfere in any manner with the navigable capacity of the waters of the United States which, either by themselves or in connection with other waters, form channels for interstate commerce. 22 Op. 332.

9. The grounding of a cable upon the soil of the United States, with the intention of connecting our territory with foreign territory by that means, is a matter which is under the sovereign control of the Government, to be exercised by Congress, but in the absence of Congressional action to be regulated and controlled by the executive department of the Government. 22 Op. 408, 514.

10. The power of the United States to regulate commerce is general, absolute, and without

limit, either as to the time, place, or detail of its exercise, except as to waters whose entire navigability for commerce is limited to the confines of a single State. 22 Op. 646.

11. Same.—The absolute power of Congress to regulate commerce includes the power to regulate the use of all means and instrumentalities used in commerce, whether on sea, rivers, and lakes, in harbors or on land, irrespective of whether a State has attempted to regulate the same matter or not. 22 Op. 501, 646.

12. Wharfage charges on property of the United States.—The imposition of a toll or charge by the State Harbor Commissioners of California on merchandise, the property of the United States, passing to or over the wharves at San Francisco, is constitutional and valid; the charge being for a service rendered, the Government is not entitled to such service free of toll. 23 Op. 299.

13. Same.—Such toll or charge is not a tax upon or in respect of interstate traffic, nor a tax upon the instrumentalities and agencies of the General Government, within the prohibitions of the Constitution, but is a charge for the use of property and facilities furnished the Government by the State of California. *Ib.*

14. Forfeiture of counterfeit coin.—Due process of law.—The seizure and forfeiture of counterfeit coin is not a taking of property without due process of law within the meaning of the fifth amendment to the Constitution. Counterfeit coin is neither property nor the subject of property; it is the product of a felonious act, and outside the law. 23 Op. 458.

15. Same.—The due process of law required by that amendment was never designed to apply to such rights as a person unlawfully in possession of counterfeit coin may have in it, but was intended for the protection of substantial rights in lawful property. *Ib.*

16. Gifts from prince or foreign state.—The provision of Article I, section 9, clause 9 of the Constitution, which forbids the acceptance, without the consent of Congress, by any person holding any office of profit or trust under the United States, of any "present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state," applies as well to a titular prince as to a reigning one; and a simple remembrance

of courtesy, even if merely a photograph, falls under the inclusion of "any present of any kind whatever." 24 Op. 116.

17. **Same—Gift to a Department of the Government.**—This prohibition expressly relates to official *persons*, and does not extend, under the circumstances outlined, to a Department of the Government or to governmental institutions. *Ib.* (117.)

17. The Constitution and laws applicable to organized Territories are not in force in the Philippines. 25 Op. 25.

18. **Guam.**—The Constitution of the United States has not been extended to Guam. 25 Op. 61.

19. **Appropriations.**—The inhibition of Article I, section 8, clause 12, of the Constitution is confined to appropriations to raise and support armies in the strict sense of the word "support," and does not extend to appropriations for the various means which an army may use in military operations, or which are deemed necessary for common defense. 25 Op. 105.

20. **Involuntary servitude—Panama Canal laborers.**—A person held to labor or service against his will, although he may have voluntarily contracted to submit himself to such control, is in a condition of involuntary servitude within the meaning of the Thirtieth Amendment to the Constitution. 25 Op. 474.

21. **Same.**—A laborer may agree to reside in a specified place, to perform only specific work, and to remain in a territory a specified time; but if compelled by force or law to comply with his obligations in these respects he, while thus under compulsion, is in a condition of involuntary servitude. *Ib.*

CONSTITUTION. See TREATIES, 68–70.

CONSTITUTIONAL INHIBITIONS. See CONSTITUTIONAL LAW, 19.

### CONSTRUCTION.

OF DEPARTMENTAL REGULATION. See ATTORNEY-GENERAL, II, h.

OF STATUTES. See STATUTORY CONSTRUCTION.

### CONSTRUCTIVE MUSTER.

See ARMY, II, b, 78–82; III, 199.

### CONSULAR COURTS.

1. **The criminal jurisdiction conferred upon United States consular officers** by section 4084, Revised Statutes, is limited to "citizens" of the United States charged with offenses committed in the countries therein referred to. It does not extend to subjects of foreign powers. 18 Op. 498.

See also DIPLOMATIC AND CONSULAR OFFICERS, 12.

2. **Transfer of convict to the United States.**—There is no statute which authorizes a convict, sentenced to prison by a consular court of the United States, to be brought to the United States for imprisonment and there held to serve out his sentence; and in the absence of such a statute, the removal of the convict to this country for that purpose would be unlawful. Opinion of Attorney-General Williams, of February 4, 1875 (14 Op. 522), cited with approval. 19 Op. 377.

3. **Marshal—Oath of office.**—Subjects of a foreign nation may be appointed marshals of consular courts, and, when so appointed, need not, under the laws or regulations, take the oath prescribed by sections 1756 or 1757, Revised Statutes. In such cases the officer should take the oath prescribed, except as to allegiance. 23 Op. 608.

### CONSULAR FEES.

See DIPLOMATIC AND CONSULAR SERVICE, II, 19–26.

### CONSULAR INVOICE.

See CUSTOMS LAW, IX, b, 390, 391.

### CONSULAR JURISDICTION.

See DIPLOMATIC AND CONSULAR OFFICERS, II, 10–18.

**CONSULAR OFFICERS OF CHINA.**

*See* CHINESE, II, b, 60.

**CONSULS.**

*See* DIPLOMATIC AND CONSULAR OFFICERS II.

**CONTAGIOUS DISEASES.**

*See* HEALTH AND QUARANTINE; IMMIGRATION, 47, 48, 87.

**CONTEMPT.**

*See* COURTS-MARTIAL, III, 19-20.

**CONTESTED ELECTIONS.**

*See* CONGRESS IV.

**CONTINGENT FUND.**

*See* EXECUTIVE DEPARTMENTS, V.

**CONTINUED FIVES OF 1881.**

*See* TREASURY DEPARTMENT, 179.

**CONTRABAND.**

*See* NEUTRALITY, 10.

**CONTRACT LABOR.**

*See* IMMIGRATION, III, a; PANAMA, 13, 14; TREASURY DEPARTMENT, 54, 55.

**CONTRACT SURGEON.**

*See* ARMY, II, d, 155, 156, 184, 185; CIVIL SERVICE, V, 126; PENSIONS, 53.

**CONTRACTS.**

**I. Generally (Formation).**

- a. *Advertisement*, 1-25.
- b. *Bids and Bidders*, 26-45.
- c. *Bonds and Sureties*, 46-56.
- d. *Acceptance, Award*, 57-60.
- e. *Supplemental*, 61-62.
- f. *Miscellaneous*, 63-70.

**II. Construction, Operation, and Validity, 71-89.**

**III. Assignment, Modification.**

- a. *Assignment*, 90-102.
- b. *Modification*, 103-108.

**IV. Release, Rescission, Abandonment, Annulment, 109-118.**

**V. Breach, Damage, Penalty, 119-129.**

**VI. Performance and Payment.**

- a. *Performance*, 130-131.
- b. *Payment*, 132-147.

**VII. Continued Employment, 148-151.**

**VIII. Contracts not authorized, 152-161.**

**IX. Miscellaneous, 162-175.**

**I. Generally (Formation).**

a. *Advertisement.*

1. The words "proper advertisements," as used in the act of April 15, 1886 (24 Stat. 12), authorizing the construction of the Congressional Library building, mean advertisements for proposals in such cases as the general provisions of law concerning public contracts require. 19 Op. 96.

2. The Commission created by that act may contract for personal services without previous advertisement; and within that description of services come those rendered by mechanics and laborers who may be employed to place the stone properly in the wall directly under the control and supervision of the Commission, its architect, or superintendent of construction. *Ib.*

3. Payment for advertisements by Executive Departments.—Section 853, Revised Statutes, is superseded by the act of June 20, 1878 (20 Stat. 216), as regards the payment for advertisements by the several Departments of the Government. 19 Op. 159.

4. All purchases and contracts for supplies in any of the Departments of the Government

must be made by advertisement unless immediate delivery is necessary. 21 Op. 59.

5. **Same.**—The first two sentences of section 3709, Revised Statutes, as amended by the acts of January 27 (28 Stat. 33), and April 21, 1894 (28 Stat. 62), being the original portion of the section which requires that "all purchases and contracts for supplies \* \* \* in any of the Departments of the Government," shall be made by advertisement, apply to purchases anywhere in the United States. *Ib.*

6. **Same.**—The remaining three sentences of section 3709, Rev. Stats., providing that advertisements for supplies should be made by all the Departments on the same day, etc., apply only to purchases in the city of Washington. *Ib.*

7. **Same.**—The word "miscellaneous," in section 2 of the act of April 21, 1894 (28 Stat. 62), must be restricted to that class of commodities which must be purchased on a considerable scale and used alike by many or all of the various Departments and Government establishments in the city of Washington. *Ib.*

8. The Secretary of Agriculture is authorized to make the purchase of seeds, under the act of March 2, 1895 (28 Stat. 733), conformably to section 3709, Revised Statutes, reserving the right to reject any and all bids. 21 Op. 162.

9. Contracts for the purchase by the Government of seals used to secure packages entered for transportation in bond must, under section 3709, Revised Statutes, be awarded upon advertisement. 21 Op. 304.

10. Section 3709 does not apply to fastenings used for the purpose named which are paid for and owned by common carriers. *Ib.*

11. Contracts for supplies or services in any of the Departments of the Government, except for personal services, or when the public exigency requires the same immediately, must be made after advertisement for proposals in accordance with section 3709, Revised Statutes. 22 Op. 1.

12. **Same.**—The Columbia Institution for the Deaf and Dumb is in the Department of the Interior, in the sense that its expenditures of public money are under the supervision of the head of that Department and subject to the provisions of section 3709, Revised Statutes, in the matter of making purchases and contracts for supplies or services. *Ib.*

13. The Postmaster-General should advertise for proposals for the work of engraving

and printing United States postage stamps, for which work the Bureau of Engraving and Printing may be permitted to compete. 22 Op. 40.

14. **Same.**—Postage stamps are supplies within the meaning of section 3709, Revised Statutes. *Ib.*

15. In advertising for supplies for the various Departments of the Government as provided in section 3709, Revised Statutes, as amended by the act of January 27, 1894 (28 Stat. 33), the advertisement may be issued in the name of all the Departments, for supplies common to all, provided the advertisement contains the quantity of supplies required by each Department; but contracts for supplies can only be entered into by the appropriate officer of each Department. 25 Op. 607.

16. A contract for furnishing the Post-Office Department with copies of the *Postal Guide*, under the act of March 3, 1881 (21 Stat. 385, 412), making an appropriation for "publication of copies" thereof, does not come within the provisions of section 3709, Revised Statutes, and the Postmaster-General is not required to advertise for proposals previously to making such a contract. 17 Op. 84.

17. The object of section 3709, Revised Statutes, in requiring advertisement for proposals before making purchases and contracts for supplies, is to invite competition among bidders, and it contemplates only those purchases and contracts where competition as to the article needed is possible, which is not the case with the *Postal Guide*. *Ib.*

18. **Supplies for the Government Printing Office.**—Section 3709, Revised Statutes, prohibiting purchases and contracts for supplies by the Departments of the Government except after due advertisement for proposals, does not apply to paper and materials for the Government Printing Office, and the acts amendatory of the section (Jan. 27, 1894, 28 Stat. 33, and Apr. 21, 1894, 28 Stat. 58, 62), enlarged it in respect to that office only so as to apply to fuel, ice, stationery, and miscellaneous supplies. 21 Op. 137.

19. The purchases by the Public Printer contemplated by the act of January 12, 1895 (28 Stat. 610), are paper and materials for printing and binding public documents and such as do not come within Revised Statutes, section 3709. *Ib.*



**20. Contract for envelopes by Postmaster-General—Advertisement.**—Section 96 of the act of January 12, 1895 (28 Stat. 624), which provides that "The Postmaster-General shall contract for all envelopes, stamped or otherwise, designed for sale to the public or for use by his own or other Departments," does not apply where an exigency requires an immediate delivery of envelopes to a particular Department and the public service might be seriously impaired by the necessity of a requisition upon the Postmaster-General, but it does apply to those cases in which contracts were to be made by advertisement. 21 Op. 181.

**21. Same.**—Where the public exigency requires the immediate delivery of the envelopes, they may be purchased, under section 3709, Revised Statutes, by the head of the department in which the exigency arises. *Ib.*

**22. Same.**—Under sections 3709 and 3718, supplies of every name and nature for the Navy are to be purchased by contract upon advertisements, except in cases when the public exigency will not permit of delay, and then by open purchase as between individuals. 21 Op. 181, 184.

**23. Contract for naval supplies.**—A contract with the Maxim-Nordenfelt Co. for the manufacture and delivery to the Navy Department of one hundred guns, the manufacture of materials to be subject to the inspection and approval of the Department, supplemented by an agreement providing for the manufacture of the guns at the Naval Gun Factory in Washington, D. C., and for keeping an account of the cost of labor involved, in order to arrive at the remuneration ultimately to be paid the company, is a contract for supplies and not for services, and a contract with another company for the manufacture of any of said guns may be made by the Navy Department as a contract for ordnance without submitting the matter to competition by public advertisement as required by section 3709, Revised Statutes. 21 Op. 577.

**24. Advertisements,** such as those for proposals for the interior finish of the post-office building in the city of Washington, need not be made in six newspapers published in District of Columbia, as provided by the act of January 21, 1881 (21 Stat. 317). 21 Op. 595.

**25. Same.**—The selection of newspapers in which to publish advertisements of this char-

acter in the District of Columbia is in the discretion of the heads of the departments. *Ib.*

CONTRACTS FOR NAVAL SUPPLIES. See NAVY, I, f.

CONTRACTS FOR EXECUTIVE DEPARTMENTS. See EXECUTIVE DEPARTMENTS, IV.

#### b. Bids and Bidders.

**26. Can not withdraw bid after acceptance.**—The head of an Executive Department is not at liberty to allow a contractor to withdraw his bid after acceptance, upon the ground of an error in stating the amount he intended to bid. 17 Op. 70.

**27. Same.**—A bid or proposal, and its acceptance by an Executive Department, constitute an obligation of the same force and effect as if a formal contract had been written out and signed by the parties. *Ib.*

**28. Bids by persons other than bona fide bidders.**—One of the purposes of the law (sec. 3737, R. S.) was to secure integrity in bidding for contracts, by preventing a bidder or contractor from making several bids, one by himself and others by his friends and employees, to be afterwards consummated by assignments of the contract by them to the real bidder, for whom they all acted. 19 Op. 187.

**29. Bids for speculation.**—Another was to prevent those who bid for and obtain contracts for mere speculation, and who have neither the intention nor the ability to perform them, from selling the contracts at a profit to bona fide bidders or contractors. *Ib.*

**30. A bid which, through mistake, erroneously states the amount intended to be bid,** is no bid at all, being made under a mistake of fact, and ought not to be considered. It is not binding even after acceptance. 20 Op. 1.

**31. Same.**—After a bid for the construction of public works has been accepted, the bidders have not the right to withdraw their proposal because of errors in calculation on their part, which mistake was not mutual and was due to their negligence. 21 Op. 186.

20 Op. 1, distinguished. *Ib.*

**32. The lowest bidder who complies with the requirements as to security, etc., is entitled to an award of the contract for certain supplies for the Navy, but the Secretary of the Navy is charged with the duty of ascertaining the facts in this regard, and his decision is not reversible by any court.** 21 Op. 56.

**33. Withdrawal of bid prior to acceptance.**—In the absence of any special statutory provision to the contrary, a bidder for a Government contract may withdraw his bid at any time until notice of acceptance. *Ib.*

**34. Same.**—In view of section 3719, Revised Statutes, a successful bidder on a contract for naval supplies should not be allowed after the bids are opened, but before he receives notice of acceptance, to withdraw his bid. *Ib.*

**35. Modification of bid previous to opening of bids.**—A bidder under an advertisement for sealed proposals may, previous to the opening of the bids, modify his bid by telegram, and the modified bid, if authentic, would, upon acceptance before withdrawal, bind the bidder. 22 Op. 45.

**36. The signature to such a telegram would cure any irregularity in the signature of the original mailed bid.** *Ib.*

**37. It is customary, but not essential, that a telegraphed proposition should be confirmed by letter.** *Ib.*

**38. A bid which was formally accepted four days prior to the act of August 1, 1892 (27 Stat. 340), limiting to eight hours daily labor upon public works of the United States, but which left the determination of minor details and the formal execution of the contract to a later date, was not a contract within the meaning of section 3 of that act.** 20 Op. 445.

**39. Section 3744, Revised Statutes, requires that all contracts of the character therein contemplated shall be reduced to writing and signed by the contracting parties.** 20 Op. 447.

**40. No binding contract is entered into where a bid materially alters the specifications of the advertisement by providing for additional time for the completion of the work and for the cessation of work in certain contingencies, even though notice of acceptance has been given, but where no formal contract is actually signed as provided by section 3744, Revised Statutes.** 20 Op. 496.

**41. Same.**—Such a bid is in contravention with the spirit and intent of section 3709, Revised Statutes, and the river and harbor act of 1888 (25 Stat. 423). *Ib.*

**42. In specific cases the Secretary of War is authorized to waive formal defects in bids and bonds in order to secure the public advantage resulting from competitive bidding.** 21 Op. 469.

**43. Consideration of a bid received after 2 p. m.**—There is nothing in the acts of January 27, 1894 (28 Stat. 33), and April 21, 1894 (28 Stat. 58), amending section 3709 of the Revised Statutes, inconsistent with the legal right of the board of award of the Department of Agriculture to consider any bid received by them through the mail after the hour of 2 o'clock p. m. 21 Op. 546.

**44. Same.**—The designation of 2 o'clock p. m. "for the opening of all such proposals in each Department" means only that such proposals shall not be opened before 2 o'clock p. m. *Ib.*

**45. Same.**—A proposal received after that hour, under circumstances which warranted the belief that it had been prepared and submitted in the light of the proposals submitted by other bidders, which had been already opened and made known, should not be received or entertained; but a proposal received under conditions which precluded the possibility of such unfairness should not be rejected because it happens to be received by the board of award a few minutes after 2 p. m. *Ib.*

*See also 48.*

#### *c. Bonds and Surety.*

**46. Certificate of sufficiency of bondsmen—Fee for.**—There is no law requiring a United States judge or a United States attorney to certify as to the sufficiency of guarantors or bondsmen offered in connection with proposals and contracts with the Navy Department, and no fees are chargeable against the Government for such service. 19 Op. 181.

**47. Same.**—The expense of obtaining a certificate from the office must be borne by the bidder or contractor as other expenses are incurred by him in the proper execution of the papers. *Ib.*

**48. Worthless bond.**—The provision in section 3949, Revised Statutes, that contracts "shall be awarded to the lowest bidder," etc., contemplates that a bid in order to entitle it to consideration should have with it an acceptable bond. A worthless bond, though regular in form, can not be regarded as such, and the party offering it does not thereby become entitled to be treated as a bidder. 17 Op. 293.

**49. Bond of indemnity.**—Where loss and injury may result to the Government from the appropriation by its contractors of a patented

**invention** or other property of third persons, a bond of indemnity should be required as a part of the contract. 21 Op. 97.

*See also* VI, b, 132.

**50. Incomplete Bonds—Date of the bid and bond not inserted in the blanks left for that purpose.**—A bond accompanying a bid to build certain public works, duly signed, sealed, and delivered, the separate proposals constituting the bid and the bond being on printed blanks bound together and consecutively paged in print, is not sufficiently defective to be regarded as invalid because the date of the bid and bond are not inserted in the blanks left for that purpose in printing the instrument. 21 Op. 469.

**51. Same.**—The date is no part of the substance of a sealed instrument, and need not necessarily be inserted. The real date is the time of its delivery, which may always be proved. *Ib.*

**52. Same.**—In specific cases the Secretary of War is authorized to waive formal defects in bids and bonds in order to secure the public advantage resulting from competitive bidding. *Ib.*

**53. Member of Congress as surety.**—The provisions of sections 3739, 3740, and 3741, Revised Statutes, considered, and held that, upon a fair construction thereof, a member of Congress may be lawfully accepted as a surety on the bond of a contractor with the United States. 18 Op. 286.

**54. Same.**—Signing a contractor's bond would not give the surety any immediate personal interest in its benefits. He is not a contractor with the Government nor does he, under any circumstances, become so under the statute. *Ib.*

**55. Surety.**—Two supplemental contracts made with a contractor when the contract itself had contemplated and provided for such changes, which have been made in the manner fixed by the original contract, do not impair the obligations of the sureties on the contractor's bond. 20 Op. 748.

**56. A surety upon the bond of a Government contractor is not discharged from liability thereon by the contractor's thereafter agreeing to pay the moneys received by him to some third person, or entering into any partnership or being served with an injunction order restraining him from paying out any of such moneys except to the plaintiff in the injunc-**

**tion suits, the Government not recognizing any of such proceedings in any way.** 20 Op. 643.

*d. Acceptance, Award.*

**57. Where the Government advertises for bids on designated routes for carrying the mails, a formal acceptance of the bid binds the Government.** 20 Op. 293.

*See also* I, b—Bids and Bidders.

**58. The lowest bidder who complies with the requirements as to security, etc., is entitled to an award of the contract for certain supplies for the Navy, but the Secretary of the Navy is charged with the duty of ascertaining the facts in this regard and his decision is not reversible by any court.** 21 Op. 56.

**59. While it has been held in some instances that proposals duly accepted without formal agreement may constitute a contract, this is not the case with contracts for public works and other contracts under section 3744, Revised Statutes.** 21 Op. 98.

**60. Award of coal contract for Post-Office Department, where an officer of that Department was a member of the firm.**—Section 1783, Revised Statutes, does not prevent the awarding of a contract for furnishing coal for the Post-Office Department to a firm one of the members of which is an officer in that Department, provided it is the lowest bidder, and the officer does not "act as an officer or agent of the United States" with reference to the purchase of the coal. That section, being quasi-penal in character, must be strictly construed; and, under such construction, a partner can not be held to be an "agent," for he is a principal, and the act is essentially the act of principals. 24 Op. 557.

*e. Supplemental.*

**61. Two supplemental contracts made with a contractor when the contract itself had contemplated and provided for such changes, which have been made in the manner fixed by the original contract, do not impair the obligations of the sureties on the contractor's bond.** 20 Op. 748.

**62. It is not competent for the Secretary of the Navy under the contract for the construction of the battle ship *Indiana* to pay to the contractors certain reserved payments prior to her preliminary or conditional acceptance, but a supplemental contract may be**

entered into modifying the terms and provisions of the existing contracts. 21 Op. 12.

*f. Miscellaneous.*

63. In awarding contracts for supplies for the Government under section 3709, Revised Statutes, no account can be taken of the fact that the contractor's employees work over eight hours a day. 19 Op. 685.

64. The eight-hour law merely prescribes a unit of measure for a day's labor in the absence of any specific contract. *Ib.*

65. The Secretary of the Navy can not legally contract with the patentee for the purchase of his patent, or for a license to use it, under an appropriation limited to the purchase of material and the employment of labor in the manufacture of such article out of it. 19 Op. 407.

66. If the patentee of an article is the lowest bidder for furnishing that article, the Secretary of the Navy may accept his proposal and make a contract with him. *Ib.*

67. If the article needed be one for which the Secretary of the Navy may negotiate without advertising for proposals, he may contract with a patentee of the article to furnish the needed supply. *Ib.*

68. Purchase of patent from naval officer.—The Secretary of the Navy may lawfully contract with an ensign of the Navy for the purchase of patent rights in improvements of B. L. R. ordnance for the use of the Navy where the ensign was not employed to make experiments, but pays the expense of obtaining letters patent, and where no expense was authorized or facility furnished by the Board of Ordnance to aid him in making or perfecting his invention. 20 Op. 329.

69. Section 3721, Revised Statutes, and not section 3718, applies to this case. *Ib.*

70. Authority to Contract—When.—The first clause of section 3732, Revised Statutes, applies to direct authority to contract granted by statute; the second clause covers an implied authority arising out of the appropriation of means to fulfill. The two sections cited are held to be construed together. If public moneys are involved an appropriation may give power to contract. If public moneys are not involved the Department is prohibited from making the contract "unless the same is authorized by law." 19 Op. 654.

CONTRACTS FOR SUPPLIES. See EXECUTIVE DEPARTMENTS, IV.

PURCHASES FROM CONTINGENT FUND. See EXECUTIVE DEPARTMENTS, V.

OPINIONS ATTORNEYS-GENERAL RELATIVE TO CONTRACTS. See 72-73.

**II. Construction, Operation, and Validity.**

71. By section 3740 contracts for carrying the mail are excepted from the operation of the law (sec. 3739) forbidding members of Congress to be admitted to any share in or benefit arising upon contracts with the Government. 18 Op. 113.

72. Eight-hour law—Application to a proposed contract.—The Attorney-General is not authorized to give his opinion upon the application of the eight-hour law to a proposed contract, where the contractors whose bids have been accepted desire to be advised before signing the contract what portion of the work that law will affect, as it is not a question which the Secretary of the Treasury is called upon to decide. 20 Op. 463.

73. It is not the duty of the Attorney-General, nor has he the right, to give an official opinion for the guidance of persons proposing to enter into contract relations with the United States. 20 Op. 465.

74. A contract for the carriage of "sample packages," silent as to the kind of sample packages, can not be held to refer only to articles of no commercial value imported as samples and not subject to duty. 20 Op. 710.

75. In a contract for public works, although the representations of an officer of the Government have been relied upon, they must be regarded as wholly personal and of no effect as against the United States. 21 Op. 78.

76. What one party to a contract may have personally understood a provision to mean at the time the contract was made can not avail. What both parties understood controls, and that is to be ascertained from the language of the contract itself. 21 Op. 585.

77. Where the advertisements and specifications are made a part of the contract.—Where a contract is duly executed and approved, and the advertisements and specifications are in terms made a part thereof, as in this case, these papers constitute the contract and resort can not be had *aliunde*. If the proposal as

accepted is not attached and made a part thereof in fact, it ought at least, in order to be regarded, be identified and included by appropriate reference. 22 Op. 98.

**78. When a writing upon its face is couched in terms importing a complete legal engagement,** without any uncertainty as to its object or extent, it will be conclusively presumed that the whole engagement was reduced to writing. *Ib.*

**79. In the case of a contract entered into by correspondence,** the whole of it must be considered, and both parties must assent to a provision or condition before either is bound. *Ib.*

**80. Proposals accepted without formal agreement.**—While it has been held generally under the statutes applicable to contracts of the Post-Office Department that proposals duly accepted without formal agreement may constitute a contract complete and binding on the Government, this is not the case with contracts for public works and other contracts under section 3744, Revised Statutes. *Ib.*

**81. A parol agreement,** while a contract is executory, is not obligatory on the Government. *Ib.*

**82. The contract for the construction of gun emplacements on Tybee Island, Georgia,** is a formal written contract, and as such merges all previous negotiations, and is presumed to express without any uncertainty the final understanding of the parties, and antecedent conversations of previous or contemporary oral agreements regarding it are strictly inadmissible. *Ib.*

**83. Implied warranty in specifications.**—In the specifications upon which certain contracts were made for the construction of a sea wall, etc., at Annapolis, Md., information was given as the result of test borings by the Government engineer officers, and a notation was placed upon the profile of the borings that the drawing was made to give to the bidder "a graphic illustration of the conditions which it is believed will be found in doing the work;" \* \* \* that "the conditions existing between and around the borings can not, therefore, be definitely known, and the architect or owner is not to be held responsible for the accuracy of the profile lines and levels of the various materials thereon shown; \* \* \* and that "if the bidder wishes, he may make such further

borings as he may desire." *Held:* That no warranty or guaranty was given by the Government that the conditions represented therein existed, and that the drawings and phraseology of the notation are not expressive of any such contract. 25 Op. 33.

**84. Dry dock—Shoring.**—A contract for the building of a dry dock contained the provision that "the excavation shall be shored and protected from caving and injury in a manner which shall be safe and sufficient, in the opinion of the engineer in charge." *Held:* The Government has a right to require that the land adjacent to the excavation, lying between the dry dock and a quay wall, be protected from caving and injury. 24 Op. 82.

**85. Repatriation of Spanish prisoners.**—The treaty of Paris of December 10, 1898 (30 Stat. 1756), contemplates and provides for the repatriation by the United States of all Spanish prisoners captured and held by them, or held and released by the insurgents in Cuba and the Philippines—soldiers and civilians—men, women, and children, and whether their detention was originally voluntary as to them or otherwise. 23 Op. 9.

**86. Same—Contract.**—To carry out the provisions of that treaty the War Department entered into a contract with Ceballos & Co., by which that company agreed to transport to Spain "such number of prisoners of war and persons as may be designated by the Secretary of War." Under that contract the authorities of the United States only were authorized to decide what persons came within the classes described in the treaty and the contract, and the company was bound to receive and transport all who were thus tendered. *Ib.*

**87. Same.**—The United States had the right to adopt, as against itself, as liberal a construction of that treaty as it chose; and the company having in good faith performed its part of the contract, the payment therefor can not be affected by the fact that the agent of the United States exceeded his authority by tendering for transportation some persons who, as afterwards decided, did not come within the purview of that treaty. *Ib.*

**88. Same—Contract not ultra vires.**—The contract being for the transportation of prisoners only was not *ultra vires* the Secretary

of War. The most that can be said is that the United States made a mistake in tendering for transportation some persons not within the purview of the contract. *Ib.*

89. Same—"Officers"—"Other persons."—The word "officers" used in the contract includes as well civil as military officers; and the term "others persons" includes all persons other than officers. *Ib.*

SITES FOR PUBLIC BUILDINGS. *See* PUBLIC BUILDINGS.

### III. Assignment, Modification

#### a. Assignment.

90. To secure material furnished.—Where a contract was made for roofing a court-house at a fixed price, and a power of attorney given to receive a part of such price as security for material purchased by the contractor: *Advised* that the power was not affected by section 3477, Revised Statutes, as no doubt existed concerning the right of the contractor to receive the amount so secured. 17 Op. 545.

91. Same.—The provisions of section 3477, Revised Statutes, touching transfers and assignments of claims against the United States, and powers of attorney, etc., for receiving payment thereof, do not apply to undisputed claims, or any claim about which no question is made as to its validity or extent. *Ib.*

92. Payments.—There being a question as to the assignment of a contract with reference to the improvement of the harbor at Brunswick, Ga., under the river and harbor acts of 1894 (28 Stat. 342), and 1896 (27 Stat. 208), all parties may execute an agreement in the nature of a trust to embody a release to the United States as to a present payment and an agreement to release as to future payments, and providing for payment to a trustee for disbursement. 22 Op. 156.

93. Same.—As regards the Government and the payment referred to, there is but one valid claim—that of the contractor named in the acts. *Ib.*

94. Same.—The word "assigns" in the said acts of 1894 and 1896 is intended to point out the party or parties who took over by formal assignment all rights to or interest in a contract, or such measure of rights and interest as carve out a complete share in the under-

taking itself, with all its risks and incidents. The assignee recognized must take in accordance with the method and formalities provided by section 3477, Revised Statutes. *Ib.*

95. Same.—The Government should not construe a contract between third parties or between their contractor and others or judicially determine the respective rights under such a contract merely for the reason that its terms relate to a Government undertaking. *Ib.*

96. Same.—The phrase "legal representatives" in the act of 1896 refers to those who may be charged with the administration of the contractor's estate, or as equivalent to the "assigns" of the contract as an integral thing. *Ib.*

97. Transfer.—A contract entered into by the Chief of Ordnance with the South Boston Iron Company in October, 1880, and subsequently transferred by that company to the South Boston Iron Works, may still be treated by the Government as obligatory upon the former company, notwithstanding such transfer. 18 Op. 88.

98. Same.—As between the South Boston Iron Works and the United States no privity exists by reason of the transfer, and in the absence of any agreement between that company and the United States, importing an undertaking by the former to perform the contract referred to, such contract can not be enforced against it by the latter. *Ib.*

99. Same.—Under the provisions of section 3737, Revised Statutes, such transfer operated to annul the contract so far as the United States are concerned; but these provisions were not made to enable a contractor to avoid his agreement with the Government and relieve himself from his obligations by a mere transfer. *Ib.*

100. Transfer of contract.—A manufacturing company, after having entered into a contract with the Navy Department to deliver a large quantity of steel castings to be used in the construction of an armored cruiser, proposed to transfer the contract to another manufacturing company, which contemplated fulfilling the covenants of the former company with the Government, and asked the approval of such transfer by the Secretary of the Navy: *Advised* that, in view of the prohibition in section 3737, Revised Statutes, the proposed transfer can not lawfully be approved and recognized by the Navy Department. 19 Op. 186.

**101. Approval in advance of assignment.**—There is no authority given by the statute, nor to be inferred from it, that any officer of the United States can, in advance, either approve or recognize any proposed assignment thus forbidden. *Ib.*

**102. The parties to an assignment may suffer damage, but can derive no benefit from an assignment of a Government contract.** *Ib.*

ASSIGNMENT OF MONEYS DUE. *See* CONTRACTS, VI., 144.

b. *Modification.*

**103. The Secretary of the Treasury is authorized by section 3 of the act of June 10, 1880 (21 Stat. 173), to modify the form of the contract made with common carriers so as to permit them to remove goods from a vessel and place them in a warehouse or other secure place, provided care be taken to stipulate that their liability as common carriers shall continue until custody and possession of the merchandise has been delivered to and accepted by the collector.** 20 Op. 674.

**104. The Secretary of the Treasury has no authority to change binding contracts entered into with the United States by responsible parties, secured by responsible sureties, in the interest of private parties thereto, without consideration inuring to the Government.** 21 Op. 115.

**105. The express stipulation in certain contracts with reference to the rentals at Ellis Island, that the Secretary of the Treasury may annul for cause, implies some fact or state of facts inducing or justifying an abrogation of the contract for the benefit of the United States.** *Ib.*

**106. A clause contained in contracts of the War Department providing for future modifications of the contract, set out, and held to be reasonable and proper, and that a modification of such a contract, which does not prejudice the interests of the Government or violate any statutory provision, is not such a new contract as must be preceded by an advertisement for proposals from bidders.** 21 Op. 207.

**107. It is not competent for the Secretary of the Navy under the contract for the construction of the battle ship *Indiana* to pay to the contractors certain reserved payments prior to her preliminary or conditional accept-**

**ance, but a supplemental contract may be entered into, modifying the terms and provisions of the existing contracts.** 21 Op. 12.

**108. The contract with Edwards, Howlett & Thompson for the improvement of the Hudson River may be legally modified, so as to provide for the acquirement by the United States, through condemnation, of the lands necessary for dumping grounds, to be maintained at the cost of the contractors.** 21 Op. 78.

MODIFICATION OF CONTRACT. *See* OCEAN MAIL SERVICE.

IV. Release, Rescission, Abandonment, Annulment.

**109. Release because of unforeseen difficulties.**—The Secretary of War has no authority to discharge a dredging company from the performance of its contract with the United States to remove and deposit dredged matter in such places as the United States engineer officer shall direct, because of unforeseen difficulties in selling or even in disposing of the material excavated, which an officer of the Engineer Corps had represented could be disposed of at a stated price per cubic yard. 17 Op. 368.

**110. Rescission.**—A contract entered into between Charles Rohr and the Bureau of Animal Industry of the Department of Agriculture, which contained no definite period during which either party was to be bound thereby, and the Bureau having informed Mr. Rohr that it would consider the contract at an end June 30, 1888, may be regarded rescinded and no longer binding. 19 Op. 224.

**111. Abandonment—Claims.**—Pursuant to a contract entered into by the Secretary of War with certain contractors for the transportation from Lynn Canal to Dawson City of supplies for the relief of destitute people in the Yukon River region, said contractors made preparations for such transportation and incurred therein a large expense. The expedition was subsequently abandoned, because it was found unnecessary, and the contractors were so notified. *Held*, The Secretary of War has power to settle and pay the claims of the contractors out of the appropriation made for such relief. 22 Op. 437.

**112. Same.**—The Secretary of War had the right to abandon this contract and decline to

perform it if he deemed that the public interests so required. *Ib.*

113. **Same.**—If the Government had ascertained that the contractors were not and could not be ready to transport the supplies within the time agreed upon, it could have treated that as a default and rescinded the contract; but in such case those facts must be shown to have existed. *Ib.*

114. **Same.**—In the absence of complaint or suggestion of the want of diligence or readiness on the part of the contractors, they must not be treated as being in fault. *Ib.*

115. **Same.**—A party may abandon, fail, or refuse to perform his contract, but its obligations still continue, although at law there may be no means for their enforcement. *Ib.*

116. **Same.**—Unless authorized by Congress the head of a Department has no power to adjust and pay claims for unliquidated damages, even when arising from the breach of a contract, except where such claims are for work and labor done or materials furnished under a contract silent as to the price and the amount thereof unliquidated. *Ib.*

117. **Annulment—Return of reserved percentage fund.**—The reserved percentage fund held by the Government as security for the performance of a contract may properly be returned to the contractors where the contract is annulled by the Government on the ground that the work was not being prosecuted with due diligence, which resulted from an unusual series of accidents and misfortunes, and where it is clear the Government can suffer no loss because of such annulment. 20 Op. 511.

118. **The express stipulation in certain contracts with reference to the rentals at Ellis Island, that the Secretary of the Treasury may annul for cause, implies some fact or state of facts inducing or justifying an abrogation of the contract for the benefit of the United States.** 21 Op. 115.

#### V. Breach, Damage, Penalty.

119. **Breach of contract.**—Unless authorized by Congress the head of a Department has no power to adjust and pay claims for unliquidated damages, even when arising from the breach of a contract, except where such claims are for work and labor done or materials furnished under a contract silent as to

the price and the amount thereof unliquidated. 22 Op. 437.

120. **A city may suspend or entirely abandon a project, although covered by a valid contract, subject only to the right of the contractor, if damaged, to recover just compensation.** 22 Op. 529.

121. **Delay in completing—Penalties.**—The Secretary of the Navy had the power under the contract of February 11, 1887, with the Pneumatic Dynamite Gun Company for the construction of the U. S. S. *Vesuvius*, to impose the penalties provided for in the sixth clause of that contract for failing to complete the vessel within the time specified. 20 Op. 631.

122. **The present Secretary of the Navy has no authority to remit those penalties and pay the amount thereof to the claimants.** *Ib.*

123. **Same.**—The provision in a contract providing for a forfeiture of \$20 for each day's delay in completing certain work on the gas plant at the military academy at West Point, is to be regarded as a penalty, and the Secretary of War is therefore authorized to assess against the contractor only the actual damages sustained. 21 Op. 139.

124. **Same—Contract stipulations—Penalty—Liquidated damages.**—Two parties entered into contracts with the proper authorities for the erection of certain buildings at the Soldiers' Home. The contracts provided that in case of failure to complete the work within the times specified a deduction or payment of \$25 "per diem" should be made as liquidated damages for each and every day thereafter until completion of the contracts. With nothing to show the cause of the delay, whether a trifling or a substantial portion of the work was delayed, or whether any real damage was caused thereby, *Held*, That the question whether contract stipulations for the payment or deduction of a certain sum "per diem" for failure to perform at a specified time is to be treated as a penalty or as liquidated damages must frequently depend upon facts and circumstances outside of the contract. No matter in how strong terms the contract provides that the stipulation is to be considered as liquidated damages, it is not at all conclusive of the matter. 23 Op. 105.

125. **Same—General principles—Compensation—Penalties.**—In determining this question, courts proceed upon the single idea of compensation, and, where this can be done



without injury to the party not in default, will treat such provisions as penalties. *Ib.*

**126. Same—Liquidated damages.**—Where it is impossible to determine the extent of the damage, courts will generally give effect to the agreement, and treat it as liquidated damages. Even here the idea of compensation must not be violated by fixing a sum greatly in excess of any actual or fairly presumable damage. *Ib.*

**127. Same.**—Whether the stipulation is to be treated as a penalty or as liquidated damages, the sum to be deducted or recovered is such as will compensate the party for the loss occasioned. *Ib.*

**128. Same—Secretary of War—Board of Commissioners of the Soldiers' Home.**—If, under the general principles stated and the facts of the case, the Secretary of War shall find that the sum to be deducted is measured by the damages really sustained, the Board of Commissioners of the Soldiers' Home have ample authority to pay said contractors the full contract prices, less damages actually sustained by the delay. *Ib.*

**129. Same.**—Where penalties are imposed under the terms of a contract between the War Department and a contractor for delay in completing the work, but the contract was performed in all other respects and no actual damage has resulted from the delay, the Secretary of War may remit the forfeiture. 21 Op. 27.

## VI. Performance and Payment.

### a. *Performance.*

**130. Questions as to whether the claims of a certain company relating to the performance of a contract entered into with the city of Havana, Cuba, relative to sewerage and paving that city, are sufficiently complete to constitute a contractual relation and whether they ought to be ultimately recognized and confirmed are such as should be left to the decision of the authorities of Havana when that city shall have resumed its normal functions.** 22 Op. 310.

**131. Specific performance.**—No one has a right to insist upon the specific performance of a contract for the improvement of streets in a municipality. A city may suspend or en-

tirely abandon a project, although covered by a valid contract, subject only to the right of the contractor, if damaged, to recover just compensation. 22 Op. 529.

### b. *Payment.*

**132. To whom—Bondsman who completed the work—Power of attorney.**—Where a contractor with the Quartermaster's Department failed to perform certain work, and an arrangement was effected whereby his bondsmen should take charge of and complete the work, the contractor executing and delivering to them a power of attorney, by which they were authorized to receive and receipt for the money due on the contract: *Advised* that the Department may recognize this power of attorney, and that payment to said bondsmen upon their receipted vouchers thereunder will discharge the Government. 19 Op. 239.

**133. Attorney in fact.**—Moneys due by the United States to a contractor may be paid to him through his attorney in fact, constituted for that purpose, notwithstanding it is claimed that one of the sureties entered into a subcontract with the contractor by which he was to receive all moneys to be paid on the contract, such subcontractor not having filed any notice of such agreement or made any claim to payment. *Ib.*

**134. Advances.**—A proposed bond of indemnity for advances made and to be made to a contractor for building a vessel deemed ineffectual. Suggested that the contractor be required to execute a refunding bond, with adequate personal or real security, or both, to cover as well advances heretofore made as any which may be made hereafter. 20 Op. 692.

**135. Money advanced on contract—Members of Congress.**—The word "advanced" in section 3739, Revised Statutes, which requires the return of money advanced by the United States on any contract wherein a member of Congress is benefited, is used in its ordinary legal meaning, and does not apply to contracts that have been fully executed and payment thereon fully made. 25 Op. 71.

**136. Part payment.**—Section 3648, Revised Statutes, prevents part payments upon Government contracts unless the United States thereupon becomes the owner of the work paid for. 20 Op. 746.

137. **Payment of the tenth installment, but not the final payment,** on a vessel under construction for the Government, may properly be made to the contractor in advance of the time stipulated in the contract, where the money has been earned, but the full trial trip and formal acceptance have been delayed. 18 Op. 105.

138. **Same.**—Section 3648, Revised Statutes, does not preclude a payment in any case where the money has been actually earned and the Government has received an equivalent therefor. *Ib.*

139. **Final payment.**—Contract for construction of battle ship *Indiana*, construed, and *held*, that it was not competent for the Secretary of the Navy, under the existing contract, to pay to the contractors any part of the last three installments of the price of the vessel or of reservations from previous payments, prior to the preliminary or conditional acceptance of the vessel; but that a supplemental contract might be entered into, modifying the terms and provisions of the existing contract. 21 Op. 12.

140. **Same—Failure to stand a test not required by the contract.**—Under a contract for the construction of a certain type of gun, 85 per cent of the sum appropriated was to be paid as the work progressed and the remainder upon its completion and test. The gun was completed and stood the regular proof test, but upon being subjected to a further test it was destroyed. *Held*, that the contractor was entitled to the final payment, as neither the statute (29 Stat. 256, 261) nor the contract required that the gun should be capable of the particular test to which it was last subjected. 22 Op. 465.

141. **Pass a Loutre—South Pass.**—The remote possibility that in some way and at some time the crevasse in Pass a Loutre may injuriously affect the channel in South Pass can not justify the United States in withholding final payment on the contract for opening and maintaining said channel after it has been opened according to contract and shall have been maintained for a period of twenty years. 23 Op. 143.

142. **Same.**—The contractor was under no obligation to close the crevasse, unless it was necessary in order to maintain the channel and protect the works. *Ib.*

143. **Same.**—The question whether a necessity exists to close the crevasse is one of fact, not of law; and the facts and inferences are opposed to its existence. *Ib.*

144. **Assignment of moneys to become due.**—The moneys due by the United States to a contractor may be paid to him through his attorney in fact, constituted for that purpose, notwithstanding it is claimed that one of the sureties entered into a subcontract with the contractor by which he was to receive all moneys to be paid on the contract, such subcontractor not having filed any notice of such agreement or made any claim to payment. 20 Op. 643.

145. **Injunctions.**—The Navy Department is not affected by an injunction issued by a State court directing a contractor to pay to a receiver all moneys received by him in his contract with the United States Government, for the reason that the order is merely interlocutory, to which the United States was not a party, and in which the court does not attempt to interfere with the operation of that Department. *Ib.*

146. **Same.**—The moneys due such contractor may be paid him through his attorney in fact, constituted for that purpose. *Ib.*

147. **Interest on money due and payable.**—Where money is due and payable on a contract at a specific time and is withheld, the creditor is entitled to demand and receive interest at the rate prevailing in the forum where suit is brought, except as against the Government of the United States and sovereign States. 22 Op. 172.

## VII. Continued Employment.

148. **Continued employment.**—The Secretary of War is without authority to continue the employment of certain contractors, or to supervise their work, after the appropriation under which they are employed is exhausted, and their contract with the Government, so far as authorized by Congress, has been exhausted. 21 Op. 244.

149. **Same.**—A contract not for the completion of any specific work, as the erection of a building, the construction of a road, or rendering a channel adequate for the passage of vessels of a certain draft, is at an end after an appropriation is exhausted. Work done after

the appropriation is exhausted would not come within such a contract. 21 Op. 244.

**150. Same.—Executive officers are prohibited** by sections 3679, 3732, 3733, and 5503, Revised Statutes, from continuing the employment of the contractors and involving the Government in expenditures or liabilities beyond those contemplated by Congress, or authorized by law. *Ib.*

**151. Same.—If further appropriations are made, there must be a new contract for their expenditure.** *Ib.*

#### VIII. Contracts not Authorized.

**152. The instrument** (set out in the opinion), signed by Ambrose W. Thompson, for himself and the Chiriqui Improvement Company, and Isaac Toucey, Secretary of the Navy, dated May 21, 1859, providing for the granting to the United States of certain lands, rights of way, and harbor and coal privileges at the Lagoon of Chiriqui and the harbor of Golfito, upon the approval of the same by Congress and the appropriation of \$200,000 as compensation therefor, is in no sense a contract obligatory upon the United States. 19 Op. 50.

**153. Same.—The appropriation of \$200,000, made by the act of March 3, 1881 (21 Stat. 448), "To enable the Secretary of the Navy to establish at the Isthmus of Panama naval stations and depots of coal for the supply of steamships of war," has no application thereto.** *Ib.*

**154. Expenditures beyond those authorized by statutes.—**The object of sections 3732, 5503, and 3679, Revised Statutes, was to prevent executive officers from involving the Government in expenditures or liabilities beyond those contemplated and authorized by the lawmaking power. 21 Op. 248.

**155. Original appropriation expended—Supplemental contract—Premiums.—**The Secretary of War is not authorized by the act of August 1, 1894 (28 Stat. 214), providing for the purchase of a ten-inch pneumatic disappearing gun carriage upon the same conditions relative to payments, etc., as are embodied in the contract for the Gordon carriage—to enter into a supplemental contract for the payment of a bonus or premium

for each shot per hour the carriage is capable of sustaining above the number required by the original contract, for the reason that the whole amount appropriated for the pneumatic carriage was expended in the original contract, and there is no authority to contract for further expenditures. 21 Op. 495.

**156. The commissioner-general of the United States to the Paris Exposition of 1900** has no authority to let a contract for printing and publishing a catalogue of the United States exhibit, etc., in which the contractor is to receive no money from the United States, but is to derive his compensation from the proceeds of the sale of the catalogue and the insertion of advertisements therein. 22 Op. 388.

**157. The Secretary of the Treasury** has no authority under section 3755, Revised Statutes, to enter into a contract with a private individual for the collection of money fraudulently obtained of the Government. 22 Op. 411.

**158. Agreement to sell property which the contractor does not own.—**The proposal made by Messrs. Mooney & Ferguson, to sell to the United States a site for a public building, at Buffalo, N. Y., which property they did not own or control, upon condition that the United States institute condemnation proceedings against any part thereof that can not be secured by grant, and deduct the cost of such proceedings from the contract price, and the acceptance thereof by the Secretary of the Treasury, do not constitute a contract obligatory upon the United States. 19 Op. 269.

**159. Same.—The Secretary can not by contract bind the Government to exercise its power of eminent domain, to enable persons to sell to the Government land which they do not own.** *Ib.*

**160. The Post-Office Department** has no power, under existing laws, to make contracts for the transmission of intelligence by telegraph for the general public, as a part or branch of the postal service. 19 Op. 650.

**161. Same.—Mail matter, as defined by statute, does not include telegraphic correspondence as such; nor does the power given the Postmaster-General to contract for carrying the mail include authority to contract for sending messages by telegraph for the benefit of the people at large.** *Ib.*

## IX. Miscellaneous.

**162. Acceptance of inferior articles.**—Where a contract for the delivery of certain supplies at an Indian agency provided, where the emergency demanded it, for the acceptance of goods inferior in quality to the sample, *held* (1) that the question whether the necessities of the service compelled acceptance of the articles offered was a question determinable only by the Commissioner of Indian Affairs or his agents, under the direction of the Secretary of the Interior; (2) that while the inspectors were not appointed or designated in the manner indicated by the statutes, the approval by the proper officials of their recommendations was an ample ratification of their appointment, and (3) that the time and place of delivery before the goods were distributed were eminently the time and place to determine their relative value. 17 Op. 384.

**163. Public cartage of merchandise.**—Section 25 of the act of June 22, 1874 (18 Stat. 186), regarding the letting out of public cartage of merchandise in the custody of the Government to the lowest bidder, applies only to such cartage as is paid for by the Government and not to cartage the expense of which is paid by the individual importer. 20 Op. 35.

**164. Transportation and subsistence at Ellis Island.**—The Secretary of the Treasury is authorized by the act of August 3, 1882 (22 Stat. 214), and sections 7 and 8 of the act of March 3, 1891 (26 Stat. 1085), to contract both as to ferriage to and from Ellis Island, and subsistence of immigrants and employees for a reasonable term, subject to the rights of the officers and agents of the Government, to any legislation that Congress may enact, and to such rules and regulations as the Secretary may adopt. The contract may confer the exclusive privilege of transportation and the collection of a reasonable compensation therefore. 20 Op. 217.

**165. Same.**—The inhibition contained in section 3735 Revised Statutes, is not applicable to the contracts under consideration. *Ib.*

**166. Contracts for the purchase of seals** by the United States used to secure packages while being transported in bond must, under section 3709, Revised Statutes, be awarded upon advertisement. 21 Op. 304.

**167. Same.**—Section 3709, Revised Statutes, does not apply to fastenings used for the purpose named which are paid for and owned by common carriers. *Ib.*

**168. Agreement for the purchase of the Zucker tract—Condemnation—Equitable interest in realty.**—The United States entered into an agreement with C for the purchase of a tract of land, not including buildings, at a price named per acre, a portion of which land C owned and was to convey to the United States, he expressly agreeing that if the balance of the tract could not be purchased by the United States within the price named per acre, then he would pay all expenses of a condemnation proceeding to acquire the same, which might be in excess of the price agreed upon. The condemnation proceedings cost more than the price named, and the excess was deducted from the amount otherwise due C for the portion of the tract conveyed by him. *Held*, that the title to the buildings acquired by the United States as a result of the condemnation was a bare legal title, and that it is held in trust for C. 23 Op. 392.

**169. Same—Purchase of equitable interest—Appropriation for "Barracks and quarters."**—This equitable interest may be purchased by the United States from the appropriation for "Barracks and quarters" made by the act of May 26, 1900 (31 Stat. 205), which authorizes not only the construction of the buildings therein mentioned, but also the purchase instead of suitable buildings already constructed. *Ib.*

**170. Royalty on guns, carriages, etc.**—The United States is authorized to enter into a contract for the payment of royalty on account of the construction of certain guns, carriages, etc., payable out of appropriations "for the armament of fortifications, and for other purposes," approved May 25, 1900 (31 Stat. 185), March 1, 1901 (31 Stat. 874); and June 6, 1902 (32 Stat. 388), notwithstanding the fact that the fulfillment of such contract might extend over a period of more than two years. 25 Op. 105.

**171. Same.**—The inhibition of Article I, section 8, clause 12, of the Constitution is confined to appropriations to raise and support armies in the strict sense of the word "support," and does not extend to appropriations for the various means which an army may

use in military operations, or which are deemed necessary for common defense. *Ib.*

**172. Taxation.**—So long as a contractor is taxed uniformly with all others in the same line of business, upon the same transactions, and the tax is levied for proper objects of taxation, he can not complain merely because his compensation or profits under his contract with the Government are thereby indirectly reduced. 22 Op. 192.

**173. Contracts with informers.**—The Secretary of the Navy is authorized by implication, from statutes authorizing him to enter into contracts for certain equipment, to contract for the compensation of persons furnishing information of frauds practiced upon the Government in supplying such equipment, the compensation to be regarded as money paid for inspectors' wages, or for detective work. (Sec. 3732, Rev. Stat. considered in connection with 15 Op. 235, 240.) 21 Op. 1.

**174. Material and labor for public works.**—The act of August 13, 1894 (28 Stat. 278), entitled, "An act for the protection of persons furnishing materials and labor for the construction of public works," relates to contracts for the construction of public buildings, fortifications, river and harbor improvements, etc., which can only be erected upon land, and are commonly understood under the designation "public works," and to repairs upon public buildings or public works. The act does not refer to contracts for the construction of naval vessels. 23 Op. 174.

**175.** The act does not apply to cases of the construction of a specific article not attached to soil, the title of which is in the United States, but which is a mere movable article, the whole title to which remains in the contractor until its completion and acceptance by the Government. *Ib.*

Relating to any particular Department, *See* that Department.

Executive Departments generally. *See* EXECUTIVE DEPARTMENTS.

Government contracts generally. Included under the general heading "Contracts."

ARMY SUPPLIES. *See* ARMY, I, g.

ATTORNEYS' FEES. *See* TREASURY DEPARTMENT, I, b, 11-14.

BATTLE SHIPS. *See* NAVY, VII.

CARRIAGE OF THE MAILS. *See* POSTAL SERVICE, III; AND OCEAN MAIL SERVICE.

DISCONTINUANCE OF MAIL TRANSPORTATION. *See* POSTAL SERVICE, 81.

CONSTRUCTION OF PANAMA CANAL. *See* PANAMA, 3-5.

GUNS, CARRIAGES, ETC. *See* ARMAMENT AND FORTIFICATIONS.

IMPLIED WARRANTY IN SPECIFICATIONS. *See* CONTRACTS, II, 83.

INDIAN CONTRACTS. *See* INDIANS, IX, AND III, f.

MONEY EXCHANGE PRIVILEGE AT ELLIS ISLAND. *See* IMMIGRATION, VII.

NAVAL SUPPLIES. *See* NAVY, I, f.

NAVAL VESSELS. *See* NAVY, VII.

OCEAN MAIL SERVICE. *See* OCEAN MAIL SERVICE.

POSTAL SERVICE. *See* POSTAL SERVICE, III.

RIVER AND HARBOR IMPROVEMENT. *See* NAVIGABLE WATERS, II.

SEA WALL AT ANNAPOLIS, MD. *See* CONTRACTS, II, 83.

SUPPLIES FOR DEPARTMENTS. *See* EXECUTIVE DEPARTMENTS, IV.

UNWARRANTED CONTRACTS MADE BY GOVERNMENT OFFICIALS. *See* CONTRACTS, VIII.

WASHINGTON AQUEDUCT TUNNEL. *See* DISTRICT OF COLUMBIA, VI.

*See also* QUASI-JUDICIAL ACTS.

## CONTRIBUTIONS FOR POLITICAL PURPOSES.

*See* CIVIL SERVICE, I, 11, 12; CONGRESS, I, 6, 7.

## CONTRIBUTORY NEGLIGENCE.

*See* NAVIGABLE WATERS, III, d, 181.

## CONVENTIONS.

*See* TREATIES, IV.

## CONVEYANCE.

*See* DISTRICT OF COLUMBIA, III, 15.

**CONVICTS.**

SENTENCED BY CONSULAR COURTS. *See* CONSULAR COURTS, 2.

**COPY OF CHARGES.**

*See* NAVY, V.

**COPYRIGHT.**

1. The international copyright act of March 3, 1891 (26 Stat. 1106), does not prohibit the importation of uncopyrighted lithographs, although they may be copies of the copyrighted paintings. 20 Op. 753.

2. The importation of foreign-made chromos, which are copies of a foreign painting that has been copyrighted, but which are not themselves copyrighted, but are protected only by the copyright of the original painting, is not prohibited by the act of March 3, 1891, amending section 4956, Revised Statutes. 21 Op. 416.

3. The importation of reprints of musical compositions copyrighted in the United States is prohibited. 22 Op. 29.

4. The importation of music books copyrighted in the United States is prohibited. *Ib.*

5. Music books made up in part of musical compositions copyrighted in the United States are prohibited importation. *Ib.*

6. Prohibited article attached to an article not prohibited.—An article which is prohibited importation can not gain admission through being attached to an article which is not prohibited. *Ib.*

7. Regulations for the forfeiture or destruction of imported prohibited articles may be so framed as to provide due process of law. *Ib.*

8. The term "book," as construed by the courts under the copyright laws, includes a musical or other composition, though printed on but one sheet. *Ib.*

9. The reprint of a musical composition may be a "book," a "lithograph," or "photograph," according to the mechanical process used. *Ib.* (31).

10. The Secretary of the Treasury and the Postmaster-General are authorized, in making the rules and regulations prescribed by section 4958, Revised Statutes, as amended

by section 4 of the act of March 3, 1891 (26 Stat. 1107), to provide for the summary destruction, without notice, of musical compositions and music books imported in violation of the copyright laws. 22 Op. 70.

11. If their nature and value demand a notice and hearing before destruction, the rules and regulations adopted may be framed to provide for the same. *Ib.*

12. "Due process of law" does not necessarily mean a judicial proceeding.—When property is of trifling value, and its destruction is necessary to effect the object of a valid law, it is within the power of the legislature to order its summary destruction without obtaining a forfeiture by judicial proceedings. *Ib.*

13. Importation of copyrighted music.—By sections 4964 and 4965, Revised Statutes, as amended by the act of March 3, 1891 (26 Stat. 1109), the importation of any of the copyrighted articles enumerated therein, including music, is made a penal offense, and consequently is prohibited. 23 Op. 445.

14. Same.—Paragraph 503 of the free list of the tariff act of July 24, 1897 (30 Stat. 196), merely provides when and under what circumstances the articles therein specified are exempt from duty on importation, and does not repeal or modify any part of the copyright law. *Ib.*

15. Importation of books copyrighted prior to the passage of the copyright act.—Section 3 of the copyright act of March 3, 1891 (26 Stat. 1106), prohibiting the importation into the United States of foreign editions of any book copyrighted in this country, is applicable to books copyrighted prior to the passage of the act. 21 Op. 159.

16. Same.—The exceptions in the case of persons purchasing for use and not for sale, who import, subject to the duty thereon, not more than two copies of such book at any one time, is not limited in its application to the "authorized editions" of such book. *Ib.*

17. Importation of books copyrighted in the United States, but printed abroad.—The importation of books copyrighted in the United States prior to 1891, and subsequently printed abroad, is not prohibited by section 3 of the act of March 3, 1891 (26 Stat. 1106, 1107). 23 Op. 371.

18. Same.—Section 4956, Revised Statutes.—The requirements and prohibitions of section 4956, as amended by said act, took effect in

general prospectively, and do not embrace in their burdens (without regard to their benefits) a copyright obtained before March 3, 1891. *Ib.*

19. *Same.*—Section 4959, Revised Statutes, as amended by the act of March 3, 1891, permits rather than requires a revised edition of a book by foreign authors theretofore published to be copyrighted. *Ib.*

Opinion of April 19, 1895 (21 Op. 159), distinguished and criticised. *Ib.*

20. *Importation of foreign books copyrighted in the United States.*—The Secretary of the Treasury is authorized and it is his duty, under sections 4956 and 4958, Revised Statutes, as amended by the act of March 3, 1891 (26 Stat. 1106), to refuse entry to importations of a book printed in the original French from type not set within the United States nor from plates made therefrom, where the copyright for the United States was secured by the Paris publisher and afterwards by him assigned to an American house. 23 Op. 353.

21. *Same.*—A dramatic composition may be a book. *Ib.*

22. *Publications printed from type set within the Philippine Islands.*—The provisions of the copyright act of March 3, 1891 (26 Stat. 1107), which requires that the two copies of books, photographs, chromos, or lithographs required to be deposited with the Librarian of Congress shall be printed from type set within the limits of the United States, are not complied with by depositing with that officer copies of publications printed from type set within the Philippine Islands. 25 Op. 25.

23. *Congress has not extended the copyright laws to the Philippines,* but has enacted, in setting up a separate government for those islands, that section 1891 of the Revised Statutes, extending the Constitution and applicable laws to organized Territories, is not to be in force in the Philippines. *Ib.*

24. *The Philippine Islands are not "a foreign state or nation" within the meaning of the copyright laws,* and the inhabitants of those islands are entitled to avail themselves of the benefits of those laws within the United States. 25 Op. 179.

Opinion of December 2, 1898 (22 Op. 268), overruled.

25. *Same.*—The proviso contained in section 4956, Revised Statutes, that the two copies of books, photographs, chromos, or

lithographs required to be deposited with the Librarian of Congress shall be printed from type set within the limits of the United States, is not complied with by depositing with that officer copies of publications printed from type set within the Philippine Islands. *Ib.*

Opinion of July 28, 1903 (25 Op. 25), adhered to.

26. *Same.*—The Librarian of Congress in determining what fees should be charged under section 4958, Revised Statutes, for the recording, etc., of copyrights, should treat a citizen or resident of the Philippine Islands as "a person not a citizen or resident of the United States." *Ib.*

27. *The inhabitants of Hawaii,* in the absence of affirmative legislation by Congress to that effect, are not entitled to the benefits of the United States copyright laws. 22 Op. 268.

28. *Same.*—When Cuba, Puerto Rico, and the Philippine Islands have been duly ceded to the United States their respective inhabitants will not be entitled to the benefits of the copyright laws unless the treaty by its terms confers such right or Congress shall extend such laws to the inhabitants of those countries. *Ib.*

29. *Same.*—So long as a state of war exists between Spain and the United States Spanish subjects have no right to the privilege of copyright conferred upon Spanish citizens by proclamation prior to the declaration of war. *Ib.*

#### CORPORATIONS.

1. *Transportation companies bringing into the United States aliens afflicted with disease pronounced to be "loathsome or dangerous contagious," are liable to the penalties prescribed by section 6 of the act of March 3, 1891 (26 Stat. 1085).* 22 Op. 122.

2. *Same.*—Corporation officers or servants responsible for or actually engaged in such breach of the immigration laws are liable to fine and imprisonment under that act. *Ib.*

3. *Same.*—A corporation is liable for the acts of its officers, agents, or servants done by its authority, and for every wrong it commits, or for quasi-criminal acts, and in such case the doctrine of *ultra vires* has no application. *Ib.*

4. *A corporation organized under the laws of any State in the Union is an American citizen*

within the meaning of the act of March 3, 1891 (26 Stat. 830). 20 Op. 161.

5. The State of Rhode Island is not a person, corporation, or association, within the meaning of sections 4 and 5 of the river and harbor appropriation act of September 19, 1890 (26 Stat. 453). 20 Op. 606.

*See also* TREATIES II, 35, 36.

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### COUNSEL.

EMPLOYMENT OF, IN FOREIGN COUNTRIES. *See* NAVY DEPARTMENT, II, a, 18.

SPECIAL EMPLOYMENT OF UNITED STATES ATTORNEYS. *See* UNITED STATES ATTORNEYS; ATTORNEY-GENERAL, 3.

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### COUNTERFEITING AND COUNTERFEIT COIN.

1. The Attorney-General will not give an official opinion upon the question whether certain plates and cuts used for making sketches and pictures of foreign postage stamps come within the terms of the act of May 16, 1884, and the act of February 10, 1891 (except sec. 4), prohibiting counterfeiting, because they relate only to criminal proceedings. 21 Op. 133.

2. The counterfeiting of an uncanceled foreign postage stamp comes within the meaning of the phrase "obligation or other securities \* \* \* of any foreign government," in section 4 of the act of February 10, 1891 (26 Stat. 742). 21 Op. 136.

3. Counterfeit coin—Forfeiture—Return of bullion therein contained.—Section 4 of the act of February 10, 1891 (26 Stat. 742), which authorizes the Secretary of the Treasury to seize and forfeit all counterfeits of the coin of the United States, does not authorize the Secretary to return to the person from whom such coin was taken the counterfeit or the value of the bullion it contained. 23 Op. 458.

4. Same—Duty of Treasury Department.—Under that section the Treasury Department has authority to seize counterfeit coin, to decide that it is counterfeit, to determine that it was unlawfully in possession of the party from whom taken, and to forfeit it; and after forfeiture to direct in what manner it

shall be disposed of. No judicial condemnation is necessary. *Ib.*

5. Same—Due process of law.—Such seizure and forfeiture is not a taking of property without due process of law within the meaning of the Fifth Amendment to the Constitution. Counterfeit coin is neither property nor the subject of property; it is the product of a felonious act, and outside the law. *Ib.*

6. Same.—The due process of law required by that amendment was never designed to apply to such rights as a person unlawfully in possession of counterfeit coin may have in it, but was intended for the protection of substantial rights in lawful property. *Ib.*

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### COURT OF CLAIMS.

*See* COURTS, II, d.

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### COURT OF COMMISSIONERS OF ALABAMA CLAIMS.

*See* ALABAMA CLAIMS COMMISSION.

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### COURT OF INQUIRY.

*See* NAVY, II, f.

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### COURTS.

I. Generally, 1-2.

II. Federal Courts.

a. Officers, 3.

b. Jurisdiction, 4-6.

c. Supreme Court, U. S., 7-16.

d. Court of Claims, 17-31.

III. State Courts, 32.

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#### I. Generally.

1. Declarations of pension claimants must be made before a court of record, or before some officer thereof having custody of its seal. 17 Op. 510.

2. Court of record—How distinguished.—The power to fine and imprison is not in this country a distinguishing mark of a court rec-



ord, but the enrolling or recording of their acts and proceedings is; and such court must have a seal by which its acts and proceedings are authenticated and proved. *Ib.*

## II. Federal Courts.

### a. *Officers.*

3. **Federal judges—Salary—Set-off.**—The salary of a Federal judge should not be withheld as falling within the act of March 3, 1875 (18 Stat. 481), to meet a judgment recovered against him as surety for a former Government employee. 20 Op. 626.

### b. *Jurisdiction.*

4. **Crime of murder committed by one Indian against another.**—The courts of the United States have no jurisdiction of a crime of murder committed by an Indian belonging to one tribe against an Indian belonging to another tribe within the reservation of a third tribe which has no law covering the case. The "bad men" clause in a treaty with the tribe to which the murdered Indian belonged does not bring the case within section 2145, Revised Statutes, giving the United States courts jurisdiction over such offense. 17 Op. 566.

5. **Crimes of American citizens committed in foreign countries.**—No Federal court has jurisdiction to try persons, whether or not claiming to be American citizens, for crimes committed in foreign countries. 20 Op. 590.

6. **Violations of laws of the United States committed within the territory known as No Man's Land** are properly cognizable in the circuit and district courts of the United States for the eastern district of Texas. 19 Op. 477.

### c. *Supreme Court of the United States.*

7. **Distribution of United States reports.**—In making up complete sets of the Supreme Court Reports for the places to be supplied under the act of February 12, 1889 (25 Stat. 661), the volumes heretofore distributed to the circuit and district judges are not to be taken into account. 19 Op. 312.

8. **Same.**—The distribution of the reports provided for by that act has no reference whatever to former distributions of reports to judges. *Ib.*

9. **Same.**—Where the circuit and district courts hold their sessions in the same rooms, one set of reports only are to be provided for the places where such courts sit. But where these courts hold their sessions in different buildings or in different rooms of the same building, a set of reports are to be provided for the place where each court sits. *Ib.*

10. **Same.**—Places where the Territorial courts sit are not within the provisions of the act. *Ib.*

11. **Same.**—Section 1 of the act of July 1, 1902 (32 Stat. 630), entitled "An act for the further distribution of the reports of the Supreme Court, etc.," authorizes the distribution of the official edition only of those reports, together with reprints of such earlier volumes as are out of print or otherwise difficult to procure. 24 Op. 106.

12. **Same.**—A reprint distinguished from a new edition. *Ib.*

13. **Same.**—Circuit and district judges.—Under section 2 of that act the circuit and district judges are authorized to select the editions, whether official or otherwise, for their respective courts, provided that no volumes of the reports have been previously furnished such court. *Ib.*

14. **Same.**—The right of selection is limited to judges of the circuit and district courts, and does not extend to the other distributees mentioned in section 2. It is also limited to the copies to be supplied for the courts, and does not include reports intended for the individual use of the judges. *Ib.*

15. **Same.**—By whom furnished.—The copies to be distributed under section 3 are to be furnished by the publishers of the official reports. *Ib.*

16. **Same.**—The digest.—By section 4 the digests are to be distributed to each judge or other official entitled to receive the decisions, either under the act of July 1, 1902, or prior legislation. *Ib.*

### d. *Court of Claims.*

17. **Referee.**—A clerk in the office of the Auditor of the District of Columbia, who was appointed a referee by the Court of Claims under the provisions of the act of June 16, 1880 (21 Stat. 284), and performed services as such, and in consideration of such services received certificates issued by the court fixing the amount of compensation allowed there-

for, is entitled to receive the amount thus allowed. 18 Op. 303.

18. A referee appointed by the Court of Claims under the act of June 16, 1880 (21 Stat. 284), does not hold an office under the Government within the meaning of section 1763, Revised Statutes. *Ib.* (304).

19. Interest on judgment.—Where a judgment by the Court of Claims in favor of claimant was appealed by the United States to the Supreme Court, which court reversed the judgment and directed the Court of Claims to enter judgment for a larger amount in favor of claimant, interest is not allowable on the latter sum under the provisions of section 1090, Revised Statutes. 18 Op. 548.

20. Only such judgments of the Court of Claims as have been appealed from to the Supreme Court and affirmed by the latter are interest bearing under that section, and they become interest bearing from the date of their presentation in good faith for payment. *Ib.*

21. *Semble* that a presentation made by a claimant who afterwards takes an appeal from the judgment is of no avail. *Ib.*

22. Interest can not lawfully be paid on a judgment of the Court of Claims against the United States where no appropriation is made for the payment of interest thereon. 20 Op. 423.

23. Limitation.—The six years' limitation of time for presenting claims under section 1 of the act of March 3, 1887 (24 Stat. 509), applies only to suits in the Court of Claims. 20 Op. 753.

24. Retirement.—The expression "any judge of any court of the United States," in section 741, Revised Statutes, providing for the retirement of judges on full pay, applies to the chief justice of the Court of Claims as well as to the other judges of that court, and he may retire at the age of 70 provided he shall then have been ten years a duly qualified judge of that court, although he may have held his commission as chief justice thereof less than ten years. 21 Op. 449.

25. The expression "after having held his commission as such at least ten years," in the same statute, does not mean that the commission under which the judge is serving at the time of his retirement must have been in force ten years. It is being in commission

and not holding a particular commission that Congress meant to make a condition. *Ib.*

26. Bounty.—The Court of Claims has authority to hear and determine questions of bounty for the capture or destruction of a vessel, either as a claim founded upon a law of Congress, or as one which may be transmitted to it by the head of a Department, under section 1063, Revised Statutes, and the act of March 3, 1887 (24 Stat. 505, 507). 22 Op. 205.

27. In determining questions with reference to bounty arising under section 4635, Revised Statutes, the Secretary of the Navy is authorized to submit the case to the Court of Claims, or he may determine for himself the question arising and award the bounty. *Ib.*

28. A claim for profits and expenses incurred in the construction of a pier in the Aqueduct Bridge, Georgetown, D. C., under a contract with the United States which was annulled for lack of diligence in prosecuting the work, involving disputed facts, and possibly controverted questions of law, is properly referable to the Court of Claims under the first clause of section 1063, Revised Statutes. 22 Op. 424.

29. Questions involving claims of individuals against the Hawaiian government, accruing prior to annexation, may be submitted by the Department of State to the Court of Claims for determination. 22 Op. 584.

30. Where, upon an appeal to the Comptroller of the Treasury from certain disallowances made by the Auditor for the War Department in the settlement of the accounts of a disbursing officer of the Army, the Comptroller is unable, because of disputed questions of fact, to determine the question presented, and certifies such fact to the Secretary of the Treasury, the latter officer has no authority, under section 1063, Revised Statutes, to direct that the matter be referred to the Court of Claims for trial and adjudication, it not being a claim within the meaning of that section. 24 Op. 545.

31. In its present status, it is such a matter as is contemplated by section 2 of the Bowman Act (22 Stat. 485). Under the latter section, provision is made for advisory action only without the entry of judgment, while by section 1063, Revised Statutes, the court must have jurisdiction of the matter so as to be able to render judgment therein. *Ib.*

UNITED STATES COURTS FOR THE INDIAN TERRITORY. *See* INDIAN TERRITORY.  
BILL OF EQUITY. *See* EQUITY.

### III. State Courts.

32. Writs issued by the courts of Minnesota run into and upon the military reservation of Fort Snelling, in that State. 17 Op. 1.

### COURTS-MARTIAL.

I. Organization, etc., 1-2.

II. Jurisdiction, 3-9.

III. Proceedings, Evidence, etc., 10-22.

IV. Findings, Sentence, Judgment, 23-36.

V. Miscellaneous, 37-39.

#### I. Organization.

1. Appointment of court by an officer who was himself the accuser or prosecutor.—A general officer, commanding a military department in July, 1865, had no power to appoint a court-martial for the trial of an officer under his command where he was himself the "accuser or prosecutor;" nor could such power be imparted to him otherwise than by a legislative act. 17 Op. 436.

2. The fact that one of the officers composing a court-martial is junior in rank and another inferior in grade to the accused, does not of itself render either of them incompetent to sit. 17 Op. 397.

#### II. Jurisdiction.

3. The conviction by a general court-martial properly called can not be ratified or confirmed by the Secretary of the Navy where one member of the court has been relieved by a subordinate without authority of the Secretary and another judge substituted in his stead. 22 Op. 137.

4. Same.—Trial by a court not legally constituted is not a trial which can be said to be "due process of law." *Ib.*

5. Same.—The consent of the accused can not confer jurisdiction upon a court not possessing it by virtue of statutory authority. *Ib.*

6. Jurisdiction of military courts in trial of officer for murder of civilian, Philippine Islands.—An officer in the Army of the United States who, while operating in the Philippines during the insurrection in those islands, and while the government of military occupation was in force therein, committed an offense against a native of those islands, was amenable only to the laws of war, and can not be tried by the civil courts of those islands or of the United States; and, having left the military service, he can not now be tried for the offense by a military court. 24 Op. 570.

7. Same.—A court-martial has no jurisdiction over an officer after he has left the service, and a military commission has no jurisdiction to try such officer now that peace has been proclaimed in the Philippines. *Ib.*

8. Amendment of record.—The Secretary of War is without authority to correct, amend, or to take any action inconsistent with the record of a court-martial duly convened upon a proper and sufficient charge. 23 Op. 23.

9. Same.—This power is inherent in a court-martial; but such correction or amendment can be made only when the court-martial is in session, and when at least five of the members of the court who acted upon the trial are present, and then in the presence of the judge-advocate. *Ib.*

*See also* Navy V.

#### III. Proceedings and Evidence.

10. There is no objection to the joinder of separate and incongruous charges in the same prosecution before a court-martial, as such is permitted by military usage and procedure. 22 Op. 589.

11. Admissibility of evidence—Construction of statutes.—It is not the official duty of the Secretary of War to give to the judge-advocate, and thus to the court-martial, an opinion as to the admissibility of certain evidence in the trial of a case before the court, nor as to the construction of a statute. Such questions should be left to the decision of the court-martial itself. 17 Op. 54.

12. In general, courts-martial are governed by the same rules of evidence which govern the ordinary courts of criminal jurisdiction. These rules, where not provided by statute, are supplied by the *common law*. 17 Op. 310.

13. **Same.—Evidence of handwriting, by comparison of hands,** is inadmissible on a trial by court-martial, excepting where the writing, acknowledged to be genuine, is already in evidence in the case, or the disputed writing is an ancient document. *Ib.*

14. **Same.—The admission of such evidence is error,** for which, if it was material to the finding of the court, the sentence of the latter should be set aside. *Ib.*

15. The fact that private papers are unlawfully seized from a defendant does not render them incompetent to be used as evidence against him in a court-martial proceeding, even though he objected to such use at the time the papers were offered in evidence. 22 Op. 589.

16. Testimony tending to show such a relation or understanding between alleged conspirators as would be indicative of a purpose to defraud the Government by means of contracts for public works to be given out and carried on under charge of the accused would be admissible, even though it related to matters antedating the time of the particular conspiracy charged. 22 Op. 589.

17. **Witness declining to answer on the ground of self-crimination.**—Where at a trial by a court-martial a witness objected to answering a question on the ground of self-crimination; but the court required him to answer, the judge-advocate reading in support of this requirement section 860, Revised Statutes: *Held* that if the court committed an error in compelling the witness to answer, the error is not such as to require a disapproval of the proceedings. 17 Op. 616.

18. **Same.—Common-law privilege, quære.**—Whether the effect of section 860 is to take away from a witness the common-law privilege of declining to answer a question which tends to criminate him, when it is manifest that he could only be tried in the courts of the United States, *quære. Ib.*

19. **Civilian witness—Contempt.**—Where a civilian witness is brought before a court-martial but refuses to testify, the court is not invested with any inherent power to punish the witness in such case, either summarily or otherwise, as for a contempt. Such power can only be exercised by it when given by the positive terms of some statute. 18 Op. 278.

20. Section 1202, Revised Statutes, arms the court with authority to compel the witness to appear and testify, so far as this can be done by process; but in securing his testimony the court is restricted to the means which it is thus authorized to employ. It can not inflict any punishment where the power to impose it is not clearly conferred by Congress. *Ib.*

21. **Witnesses—Fees.**—The act of March 2, 1901 (31 Stat. 950), which provides that a person who, being duly subpoenaed to appear as a witness before a general court-martial of the Army, wilfully neglects or refuses to appear, or refuses to qualify as a witness, or to testify or produce documentary evidence which he may have been legally subpoenaed to produce, shall be deemed guilty of a misdemeanor, requires that the legal fees of such witness shall be first duly paid or tendered in order to lay the foundation for a prosecution under that act. 23 Op. 424.

22. **Same—Tender of fees.**—A mere statement in the subpoena, signed by the judge-advocate of the court-martial, to the effect that the United States tenders or guarantees the payment of the authorized fees, is not a sufficient compliance with that act to support a prosecution thereunder. *Ib.*

#### IV. Findings, Sentence, Judgment.

23. **Approval by President—Evidence of.**—Where the approval of the proceedings, findings, and sentence of a court-martial by the President is attested by an entry on the record signed by the Secretary of War, this is sufficient evidence of such approval. 17 Op. 397. (But see Note 17 Op. 399.)

24. **Annulment of sentence.**—The President has no power to review the proceedings of a court-martial and annul its sentence, where the court was legally constituted, the case within its jurisdiction, and the sentence approved by the proper reviewing authority and carried into execution. 20 Op. 297.

25. **Sentence of summary court—Approval in part and disapproval in part.**—The act of October 1, 1890 (26 Stat. 648), "to promote the administration of justice in the Army," does not give the reviewing officer power to mitigate or approve a part and disapprove a part

of a sentence of a summary court, where the sentence was within the power of the court-martial to impose. 20 Op. 346.

**26. Substitution in findings of words other than contained in charge.**—A court-martial has the right to substitute in its findings the words "conduct to the prejudice of good order and military discipline" for the words "conduct unbecoming an officer and a gentleman," as contained in the charge. 18 Op. 113, 114.

**27. The court-martial that tried Captain Carter was justified in its finding of guilty upon the charges and specifications relating to the contracts of September, 1896, and the finding and sentence of the court with respect thereto should be approved.** 22 Op. 589.

**28. Same.**—The evidence failing to show satisfactorily fraudulent knowledge and purpose on the part of Captain Carter with reference to certain minor specifications of offense upon which he was found guilty by the court-martial, he should have been acquitted on that ground as to these charges. *Ib.*

**29. Same.**—In the absence of any such error of the court in the admission or rejection of testimony as would work or was liable to work injury to Captain Carter, there is no reason on these grounds to disturb the findings of the court. *Ib.*

**30. Attestation of sentence.**—The death of one of the members of a general court-martial after sentence had been imposed, but before he had appended his signature to the sentence, as required by Article 52 of the Articles for the Government of the Navy (sec. 1624, Rev. Stat.), does not render the sentence void. It is sufficiently authenticated if attested by the other members of the court. 23 Op. 550.

**31. Reconsideration after approval and execution.**—Where the sentence of a legally constituted court-martial, in a case within its jurisdiction, has been approved by the reviewing authority and carried into execution, it can not afterwards be revised and annulled. 17 Op. 297.

**32. Execution—Order of one President, unexecuted, annulled by subsequent order of succeeding President.**—Where an order of one President removing the disabilities and ordering the honorable discharge of an army officer who had been sentenced by court-martial to dishonorable discharge was not

executed but was subsequently rescinded by a succeeding President, the original order, being executory and revocable before execution, was completely annulled thereby. 17 Op. 436.

**33. Finality of sentence.**—The sentence of a court-martial is not final until the officer ordering the court shall confirm it, which confirmation is the judgment of the law, pronounced by the court on the verdict of a jury. The sentence bears a close analogy to such confirmation. 19 Op. 107.

**34. Remission—Pardon—Within the pardon-ing power of the department commander.**—Where a lieutenant was sentenced by a court-martial to reduction of rank in his grade, and the sentence was carried into effect, and later the department commander remitted the sentence under the power to pardon conferred by Article 112 of the Articles of War, *Held* that the punishment imposed by the sentence being a continuing one, the sentence could be remitted by the pardoning power, and that the authority exercised by the department commander was in conformity to law. 17 Op. 656.

**35. Pardon.**—An officer who is authorized to order a general court-martial has no power under the One hundred and twelfth Article of War to pardon or mitigate the punishment adjudged by it after confirmation by him of the sentence. 19 Op. 106.

**36. Suspension of pay—Forfeiture—Swain court-martial.**—Suspension of pay for a given period under article 101 of section 1342, Revised Statutes, signifies its absolute forfeiture, and not simply the temporary withholding thereof. 18 Op. 113, 120.

## V. Miscellaneous.

**37. Untruthful statements made by a military officer to the official head of the War Department, with intent to deceive that officer, have not been regarded in the past, and should not be regarded in the future as any less an offense than one "unbecoming an officer and a gentleman."** 18 Op. 113, 119.

**38. Delivery of prisoner to penitentiary.**—A prisoner sentenced by a court-martial to confinement in a penitentiary of the United States should not be turned over to a marshal, but should be conducted to the prison by the

proper officer of the War Department. 21 Op. 204.

**39. Homicide by a private soldier in Cuba.**—Article 58 of the Articles of War, which provides that "*In time of war, insurrection, or rebellion \* \* \* murder (inter alia) \* \* \** shall be punished by the sentence of a general court-martial, when committed by persons in the military service of the United States," does not apply to the present situation of affairs with regard to Cuba. Therefore a private of the Second United States Artillery who committed homicide in Cuba subsequent to the treaty of peace with Spain, the victim being a teamster in the military service, should not be tried by court-martial nor by a military commission. 23 Op. 120.

CONTEMPT. See III, 19, 20.

NAVAL COURTS-MARTIAL. See NAVY, V.

#### COVERINGS.

See CUSTOMS LAW, 210–213, 222–226.

#### COWBOYS.

See ARMY, I, a.

#### CRIMES AND CRIMINALS.

1. No Federal court has jurisdiction to try persons whether or not claiming to be American citizens for crimes committed in foreign countries. 20 Op. 590.

2. The violation of the provisions of a statute that subjects a person to a penalty, whether a forfeiture or otherwise, must be something more than an accidental or unwitting violation. 22 Op. 390.

3. A criminal prosecution will lie to punish a person who grazes sheep in a forest reservation in violation of the regulations promulgated by the Secretary of the Interior pursuant to the provisions in the sundry civil act of June 30, 1898 (30 Stat. 35), applicable thereto. 22 Op. 266.

4. Americans criminals in foreign countries—Expenses incident to transportation to United

States.—The French Government may be properly reimbursed, from the \$5,000 appropriated by the act of July 16, 1892 (27 Stat. 226), for its expenses in conveying to the United States, on requisition of a United States consul, five American seamen charged with murder. 20 Op. 600.

See COURTS, 4, 5; COURTS-MARTIAL, 6, 38, 39; CONSULAR COURTS; IMMIGRATION, 45; INDIANS, XII; ARMY, 1–6.

#### CROW INDIANS.

See INDIANS, V, c, 150.

#### CRUISER GALVESTON.

See UNITED STATES, I, 23–26.

#### CUBA.

1. Cuban insurrection.—The rules of international law with respect to belligerent and neutral rights and duties do not apply to the present Cuban insurrection. 21 Op. 267.

2. Same.—The sale and shipment or carriage of arms and munitions of war to Cuba does not become a violation of international law merely because they are destined to a port which is recognized by the Spanish Government as open to commerce, nor because they are to be or are landed by stealth. *Ib.*

3. Same.—The mere sale or shipment of arms and munitions of war by persons in the United States to persons in Cuba is not a violation of international law, however strong a supposition there may be that they are to be used in an insurrection against the Spanish Government. Individuals in the United States have the right to sell such articles and ship them to whomever may choose to buy. *Ib.*

4. Same.—Neither our Government nor our citizens have means of knowledge and therefore can not be bound to take notice as to who are and who are not loyal subjects of Spain, so long as their actions are confined to her own territory. *Ib.*

5. **Same.**—If persons supplying or carrying arms and munitions from a place in the United States are in any wise parties to a design that force shall be employed against the Spanish authorities, or that either in the United States or elsewhere, before final delivery of such arms and munitions, men with hostile purposes toward the Spanish Government shall also be taken on board and transported in furtherance of such purposes, the enterprise is not commercial but military, and is in violation of international law and of our own statutes. *Ib.*

6. **In the distribution of supplies to the destitute inhabitants of Cuba** under the provisions of section 1 of the act of May 18, 1898 (30 Stat. 419), the commanding officers of the Army may use either army officers or such other volunteer agencies as may be available for the purpose, and the field of their operations is not necessarily restricted to the territory over which they exercise actual control. 22 Op. 190.

7. **Payment of Cuban soldiers.**—For the purpose of disbanding the insurgent forces in Cuba, the President is authorized to pay some or all of the soldiers of such forces either out of the revenues of the island or out of the emergency fund of \$3,000,000 provided by the act of January 5, 1899 (30 Stat. 772). 22 Op. 301.

8. **Same.**—The emergency fund provided by that act is intended to cover emergencies arising in the military administration of Cuba and other territory that has come into the possession of the United States through the operations of war. *Ib.*

9. **Same.**—The President is authorized to do whatever he finds necessary or expedient for the proper administration of government in Cuba, having in view the pacification of the island and the establishment of order and industry. *Ib.*

10. Since the exchange of ratifications of the peace treaty with Spain the occupation of Cuba by the United States has been occupation of a foreign country in time of peace, and is not made a temporary war occupation or otherwise affected, internationally speaking, by the circumstance that the Army has been used as the agency. 22 Op. 654.

*But see 16, 34.*

11. **In ascertaining the obligation of the United States with regard to any debts that the**

government of Cuba may inherit from the former (Spanish) government of Cuba, there should be taken into consideration the fact that Cuba is being occupied with the sole object of its pacification preparatory to turning over the control to the people of Cuba. *Ib.*

12. **Nature of United States control over Cuba—Trustee.**—Both by the rules of public law that apply to foreign territory seized and held as a conquest, and by the terms of the resolution of Congress, the United States, upon taking possession of Cuba, rightly entered upon the exercise of sovereignty, jurisdiction, and control over that island. These are to be used by the United States as a trustee for the benefit of the people of Cuba, and also for its pacification. 23 Op. 222.

13. **Same.**—Limitation of its power.—No limitation of this power is created by the trust, but as to what acts of sovereignty it will perform, the particular manner in which it will perform them, and the subject upon which it will permit its sovereign will to operate, the United States, acting through the President as commander in chief, is the sole judge. *Ib.*

14. **The obligations of the United States with reference to Cuba** are merely those which arise from the fact that it is a temporary military occupant. 22 Op. 384.

15. **The United States Government** is not the successor of the Government of Spain in Cuba, but merely an intervening power arranging the succession, and as such it can not be held to have assumed the obligations arising from or growing out of concessions granted or contracts entered into by the Spanish Government in Cuba previous to its surrender of sovereignty therein. *Ib.*

16. **The landing of cables in Cuba** is under the control of the War Department, by reason of the fact that its occupation by the United States is of a military nature. 22 Op. 408.

*But see 10.*

17. **Same.**—Owing to the temporary nature of the occupation of the island of Cuba by the United States, it is inexpedient to grant permission to the Commercial Cable Company to land a cable upon the soil of Cuba. *Ib.*

18. **The grounding of a cable upon the island of Cuba** to connect it with a foreign country can not be done and maintained in opposi-

tion to the law of the Government which exercises sovereign power in the island. 22 Op. 514.

19. **Same.**—The authorities of the United States have full power, in their discretion, to prevent by all necessary means the grounding of a cable in Cuba intended to connect that island with the United States or any other country, or to remove or disrupt any cable which may be laid in disregard of its instructions and against its will. *Ib.*

20. **Coastal waters of Cuba—Navigable waters of the United States.**—The acts of June 14, 1880 (21 Stat. 197), and August 2, 1882 (22 Stat. 208), which authorize the Secretary of War to remove sunken vessels or craft which obstruct the navigation of a "navigable" water of the United States, do not apply to the coastal waters of Cuba, as such waters do not become waters of the United States by reason of the temporary jurisdiction of the United States over that island. 23 Op. 76.

21. **Copyright law.**—When Cuba, Porto Rico, and the Philippine Islands have been duly ceded to the United States, their respective inhabitants will not be entitled to the benefits of the copyright laws unless the treaty by its terms confers such right or Congress shall extend such laws to the inhabitants of those countries. 22 Op. 268.

22. **Registration of trade-marks.**—While Cuba is a foreign country and the treaties of Spain no longer apply there, yet it is now being governed by the United States; and since the law in force there gives to citizens of the United States similar privileges to those given by our trade-mark law, Cuba may be regarded as one of the countries with which we have reciprocal arrangements, and a person located there is entitled to register trade-marks under our law. 23 Op. 634.

23. **Alien law—Estate of Don Ramon Martí y Buguet.**—Article XI of the treaty of Paris, 1898 (30 Stat. 1759), obliges the United States to see that Spaniards in Cuba have the same rights to appear before Cuban courts and pursue the same course therein as citizens of Cuba, but it does not make it unlawful for the laws of that country to give them better methods of appearing and proceeding as aliens or Spanish subjects than those enjoyed by the citizens themselves. Consequently that article does not prevent article 44 of the

alien law of Cuba from being applicable to the estate of Don Ramon Martí y Buguet, a native of Tarragona, Spain, and a Spanish subject, who died intestate at Baez, Santa Clara, Cuba, July 2, 1899. 23 Op. 93.

24. **Same—Administration.**—Under article 44 of said alien law foreign consuls were authorized to be the administrators and judges in charge of the business of settling estates and succession to property of aliens dying intestate in Cuba. This privilege having been denied the Spanish consul by the court of Santa Clara, that court was without jurisdiction to administer the estate of Don Ramon Martí y Buguet. To oust the consul altogether and proceed without him was to proceed without jurisdiction. *Ib.*

25. **Spanish subjects—Treaty of Paris, 1898.**—Under Article IX of the treaty of Paris, 1898 (30 Stat. 1759), a Spaniard born in the Peninsula, who died in Cuba before the expiration of one year from the ratification of that treaty, was, in contemplation of the treaty, a Spanish subject at the time of his death. *Ib.*

26. **Homicide in Cuba by private in United States Army.**—Article 58 of the Articles of War, which provides that "In time of war, insurrection, or rebellion \* \* \* murder [inter alia] \* \* \* shall be punished by the sentence of a general court-martial, when committed by persons in the military service of the United States," does not apply to the present situation of affairs with regard to Cuba. Therefore a private of the Second United States Artillery who committed homicide in Cuba subsequent to the treaty of peace with Spain, the victim being a teamster in the military service, should not be tried by court-martial nor by a military commission. 23 Op. 120.

27. **Same—Trial by Cuban courts permitted.**—Article 59 of the Articles of War does require that such private be delivered to the Cuban courts, but it is, nevertheless, proper to permit such courts to try him. *Ib.*

28. **The Spanish mining laws** were not continued in force in Cuba after the American occupation of the island. 23 Op. 222.

29. **Same—Disposition of mining or other property formerly belonging to the Spanish Crown—The President's power.**—The President, by virtue of his constitutional authority as commander in chief of the Army and Navy,



has adequate power to use and make disposition of property in Cuba formerly belonging to the Crown of Spain, or subject to the imperial prerogative, and this includes the right to dispose of mining or other property formerly belonging to the Spanish Crown. *Ib.*

30. **Same—Grants of mining rights—The President—Military governor.**—If he desires to do so, the President can authorize the military governor of Cuba to make grants of mining rights, but whether such power should be exercised is a question involving important and delicate considerations. *Ib.*

31. **Guantanamo Naval Station—Proof of title.**—The provisions of section 355, Revised Statutes, are not applicable to the expenditures authorized by the act of March 3, 1903 (32 Stat. 1188), for the erection of necessary improvements on lands at Guantanamo, Cuba, leased by the United States from the Republic of Cuba for the purposes of a naval station. 25 Op. 160.

32. **Same.**—The advance payments of rental to the government of Cuba provided for in article 1 of the agreement of July 2, 1903, may lawfully be made without further proof of title than the certified copies of the deeds conveying the lands to that government. *Ib.*

33. **Questions as to whether the claims of a certain company relating to the performance of a contract entered into with the city of Havana, Cuba, for the sewerage and paving of that city, are sufficiently complete to constitute a contractual relation, and whether they ought to be ultimately recognized and confirmed, are such as should be left to the decision of the authorities of Havana, when that city shall have resumed its normal functions.** 22 Op. 310.

34. **Same.**—The administration of the United States in Cuba being of a military nature and merely temporary, no action should be taken to bind the island or any of its municipalities to large expenditures, except upon grounds of immediate necessity. *Ib.*

*But see* 10.

35. A concession in due form to construct certain tramways in the city of Havana was granted to one de la Torre in 1893, notwithstanding the objection of a rival company, which claimed the right under a royal decree of February 5, 1859. Subsequently the same concession was advertised at public auction and sold to de la Torre, the rival company

failing to bid. *Held*, the owners of the de la Torre concession have a *prima facie* right to proceed at their own risk, under the permission of the municipal authorities. 22 Op. 520.

36. **Same.**—The military order of December 24, 1898, forbidding the making of any grant or concession in the future, was not intended to apply to those previously made in due form. *Ib.*

37. **Same.**—The military authorities have power to direct the municipal authorities to suspend public works and improvements for proper public reasons, even where such suspension interferes with rights that have previously vested. *Ib.*

38. Any vested rights of Dady & Co., under their alleged contract for the construction of certain public works in Havana, are preserved by the treaty of Paris. Recommended that the matter be referred to the civil authorities of that city with direction to investigate present status of their claim, and to determine whether it is for the interest of the city that the improvements contemplated be carried out immediately or abandoned. 22 Op. 526.

39. **Same.**—In the exercise by the United States of the powers of municipal government in Cuba, it may change or modify the form or constituents of the municipal establishment, and in this exercise of sovereignty may provide the method, terms, and conditions under which internal improvements may be carried on, or forbid them to be carried on, although inchoate or even completed contracts therefor have previously been entered into. *Ib.*

40. **Same.**—Any inchoate rights or grants made by a municipal body in Cuba under Spanish sovereignty, which for their completion require the assent or approval of the Crown or its officers, in the absence of such assent or approval made prior to the treaty of cession, are ineffective and incomplete. *Ib.*

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#### CUBANS.

*See* SEAMEN, 13, 14.

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#### CULEBRA ISLANDS.

*See* PORTO RICO, 40-43.

**CUSTOMS ADMINISTRATIVE ACT.**

(Act of June 10, 1890, 26 Stat. 131.)

**CUSTOM-HOUSES.**

1. The term "custom-house broker," as used in section 23 of the tariff act of 1894 (28 Stat 552), includes persons who deal in drawback matters exclusively, as well as those who combine all branches of custom-house work. 21 Op. 255.

2. When the license of such a broker has been revoked, he can not thereafter deal directly with the customs officials, except when acting for himself as principal. *Ib.*

3. The authority to collect drawback may be delegated by a manufacturer to a general selling agent or to some attorney at law, but such a person must conduct his business through a licensed broker unless he obtains himself a license. *Ib.* (258).

4. The location of the custom-house outside of the corporate limits of the municipality known as Sabine Pass complies with the act of June 23, 1898 (30 Stat. 487), and it is not necessary that it should be removed to a point within the corporate limits. 22 Op. 306.

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## I. In General.

### a. *Constructions, etc.*

**1. Revised Statutes, sec. 2504—Consignments from different persons.**—The terms "*quantity*" and "*whole quantity*," as employed in Schedule M (Rev. Stat. 2d ed., p. 476), are not to be understood as covering all the fruit imported in any one vessel shipped to one consignee, if coming from different consignors. Each consignment, not only from one party, but of each separate kind of fruit specified in the statute, is to be considered as the "*quantity*," and as the "*whole quantity*," therein specified. 17 Op. 203.

**2. Act of Aug. 27, 1894, par. 608 (28 Stat. 544)—Discriminating duty on salt.**—The "*most-favored-nation clause*" in the treaty of May 1, 1828, between the United States and the Kingdom of Prussia is not violated by paragraph 608 of the tariff act of August 27, 1894 (28 Stat. 544), laying a discriminating duty on salt imported from a country which imposes a duty on salt exported from the United States. 21 Op. 80.

**3. That treaty** is to be taken as operative as respects so much of the German Empire as constitutes the Kingdom of Prussia. *Ib.*

**4. In case of conflict between a treaty and a subsequent statute**, the latter governs. *Ib.*

**5. Act of June 10, 1890, section 23 (26 Stat. 140).**—The operation of section 23 of the customs administrative act of June 10, 1890, relative to the abandonment of imported goods, wares, and merchandise, is not confined to damaged goods. 21 Op. 326.

**6. It is not the intent of Congress** that the United States should in any case exact as duties an amount greater than the value of the property imported. *Ib.*

**7. Act of July 24, 1897, section 29, par. 181 (30 Stat. 166).**—The six months within which the refined metal produced from imported lead-bearing ores must be reexported or the regular duties paid thereon, under section 29 and paragraph 181 of the tariff act of July 24, 1897 (30 Stat. 166), means six months from the date of the receipt of the ore by the manufacturer at his bonded smelting establishment, and not six months from the date of the receipt of the ore at its port of entry. 23 Op. 46.

**8. Act of July 24, 1897, sec. 11 (30 Stat. 207)—Trade-mark.**—The purpose of section 11 of the tariff act of 1897 is twofold—to protect the domestic manufacturer against encroachment upon his trade-mark, and the public from the imposition of imported articles assuming domestic names. It is the simulation or counterfeit, and not reality or genuineness, at which the section is aimed. 24 Op. 551.

CONSTRUCTION, ETC., OF STATUTES RELATING TO ANY SPECIFIC FEATURE OF THE CUSTOMS LAW. See following, under appropriate heading.

DUTY ON GOODS IN BOND OR IN A PORT OF THE UNITED STATES ON THE DATE A NEW LAW GOES INTO EFFECT. See CUSTOMS LAW, 121, 183.

### b. *Collection Districts.*

**9. The act of March 3, 1887 (24 Stat. 492)**, amending sections 2533 and 2534, Revised Statutes, and making Hartford a port of entry in place of Middletown, creates a new collection district and also a new office (that of collector), requiring a new commission and a new bond. 18 Op. 591.

## II. Officers of Customs.

### a. *Secretary of the Treasury.*

**10. Reversal of decision of predecessor.**—The Secretary of the Treasury can not of himself, and without an opinion of the Attorney-General upon the subject, as required by section 2 of the act of March 3, 1875 (18 Stat. 369), reverse a decision of his predecessor, holding certain meats imported into this country after prior exportations to be dutiable. 18 Op. 139, 140.

11. **Duty of investigation.**—If inefficiency, neglect of duty, or malfeasance in office is charged against a general appraiser, it is the duty of the Secretary of the Treasury to investigate the matter. 21 Op. 85.

12. The Secretary of the Treasury has no power to permit collectors of customs to receive special deposits of penal duties, to be returned by them to the importers in case the duties should be remitted. All moneys paid to collectors of customs for unascertained duties must be placed to the credit of the Treasurer of the United States. 21 Op. 345.

13. The Secretary of the Treasury has power, under section 249, Revised Statutes, to prescribe rules and regulations for the collection of duties on imports. 21 Op. 571.

14. The Secretary of the Treasury can not, by his regulation, alter or amend a revenue law so as to insert into the body of the statute a limitation which Congress did not think it necessary to prescribe. 22 Op. 405.

15. **No authority to revive office of appraiser of customs at Pittsburg, Pa.**—The Secretary of the Treasury having abolished in 1880 the office of appraiser of customs in the collection district of Pittsburg, Pa., under the authority conferred upon him by section 2653, Revised Statutes, has no authority to revive it. By abolishing the office the Secretary exhausted all his power in the premises, and Congress alone can recreate it. 24 Op. 613.

16. **Classification decisions of the Board of General Appraisers—Binding effect of.**—The Secretary of the Treasury and collectors of customs are bound by classification decisions of the Board of General Appraisers, when unappealed from, only so far as such decisions affect the goods immediately before the Board for classification. 25 Op. 81.

17. **Same.**—The Secretary of the Treasury has authority, and it is his duty, to instruct collectors of customs to what extent, if at all, they are to be guided by the conclusions, general doctrines, and expressions contained in any opinion by the Board of General Appraisers, except as regards the merchandise concerning which the decision was made. *Ib.*

18. **Same.**—Where there is conflict between a decision of the circuit court on appeal from the Board of General Appraisers, and a subsequent decision of the Board, the Secretary of the Treasury should give greater consideration to the decision of the court. *Ib.*

19. **Same.**—Section 2 of the act of March 3, 1875 (18 Stat. 469), in regard to the reversal or modification adversely to the United States of a ruling or decision of the Secretary of the Treasury, by the same or a subsequent Secretary, is in force and its provisions must, of course, be obeyed. *Ib.*

20. There is no statute giving the Secretary of the Treasury any direct control over suits instituted for the collection of unpaid duties. 17 Op. 142.

21. An action for the recovery of duties on goods previously smuggled would be simply an action of assumpsit, not involving any issue of fraud, and therefore not coming under the direction of the Secretary of the Treasury by section 376, Revised Statutes. 20 Op. 714.

22. The Secretary of the Treasury, and not the Attorney-General, should, under the peculiar provisions of section 376, Revised Statutes, direct prosecutions for fraud or attempted fraud upon the revenue. 20 Op. 715.

**AUTHORITY AND DUTY OF THE SECRETARY IN THE MATTER OF REFUND.** See CUSTOMS LAW, VI, a.

**REMISSION OR COMPROMISE OF FINES, PENALTIES, AND FORFEITURES.** See CUSTOMS LAW, IX, g.

**INFORMERS' COMPENSATION.** See CUSTOMS LAW, IX, h.

**IMMEDIATE TRANSPORTATION.** See CUSTOMS LAW, III, h.

**SEALED CARS.** See CUSTOMS LAW, III, i.

**TRANSPORTATION THROUGH THE UNITED STATES.** See CUSTOMS LAW, III, j.

**REMOVAL OF GOODS FROM VESSEL TO WAREHOUSE.** See CUSTOMS LAW, I, 121.

**WITHDRAWAL FROM WAREHOUSE—SUPPLIES FOR VESSELS.** See CUSTOMS LAW, 131–134.

**WAREHOUSE—DELIVERY.** See CUSTOMS LAW, III, e.

**RELIQUIDATION.** See CUSTOMS LAW, V, c.

**RELEASE OF GOODS ILLEGALLY IMPORTED.**

See CUSTOMS LAW, IX, f.

**REFUSAL OF ENTRY.** See CUSTOMS LAW, 76.

#### b. *Collectors and Assistant Collectors.*

23. The issuance by collectors of customs of certificates showing that merchandise of domestic production shipped at ports on the

Great Lakes to other ports in the United States, by routes through Canadian territory, is merchandise of domestic production, is not authorized by law. 18 Op. 261.

**24. Official bond.**—The omission of the words "in the State of Vermont" from the official bond of the collector of customs for the district of Vermont does not impair its validity. The bond is valid, either under the statute or at common law. 18 Op. 458.

**25. Delivery of goods—Controversy.**—Collectors of customs have no authority to interfere, or direct the United States storekeeper to interfere, in a controversy between importers and warehousemen as regards the delivery of goods. 21 Op. 232.

**26. Special deposits of penal duties, return of.**—The Secretary of the Treasury has no power to permit collectors of customs to receive special deposits of penal duties, to be returned by them to the importers in case the duties should be remitted. 21 Op. 345.

**27. All moneys paid to collectors of customs for unascertained duties, must be placed to the credit of the Treasurer of the United States.** *Ib.*

**28. Interrogatories to an importer.**—The collector is the authority to determine whether an interrogatory propounded to an importer is proper and his refusal to answer justified. 22 Op. 456.

**29. Authority to seize and destroy fur-seal skins unlawfully imported.**—The authority of such officers to seize and destroy by summary action rather than under judicial proceedings is reached by implication, as the statute is not explicit upon that point. Where rights of person and property are involved, an implied authority which is summary and might be used arbitrarily should not be lightly assumed. In such cases the inferences should not only be persuasive but irresistible. 24 Op. 577.

**30. Correspondence with Collectors.**—The Secretary of Commerce and Labor is not required, in the execution of the duties imposed upon him by the act of February 14, 1903 (32 Stat. 825), to correspond with collectors of customs through the Secretary of the Treasury. 25 Op. 3.

**31. Same.**—Collectors of customs continue to be officers of the Treasury Department, but the Secretary of the Treasury should not interfere in matters expressly transferred to the Department of Commerce and Labor by the act creating that Department. *Ib.*

**32. Bond by agent making entry.**—Collectors of customs are required under section 2787, Revised Statutes, to take from an agent or person other than the owner making an entry of imported merchandise, a bond in the penal sum of \$1,000, with condition that the actual owner or consignee of the merchandise shall deliver a full and correct account thereof according to the terms and specifications of that section. 25 Op. 66.

**33. May not appeal from decision of Board of General Appraisers against the wish of the Secretary of the Treasury.**—A collector of customs is merely a subordinate of the Secretary of the Treasury; and section 15 of the act of June 10, 1890 (26 Stat. 131), authorizing a collector or the Secretary of the Treasury, if dissatisfied, to apply for a review of the conclusions of law and fact involved in the decision of a Board of General Appraisers, does not mean that the collector may appeal against the decision or wish of the Secretary. 21 Op. 203.

**34. Same—Decisions of the Secretary binding upon collectors.**—The provisions of section 2652, Revised Statutes, making conclusive upon all customs officers the decisions of the Secretary of the Treasury upon all questions as to the construction and meaning of any part of the revenue laws, remain unaffected by the act of 1890 referred to. *Ib.*

**35. Classification of sugars based upon appraiser's report.**—It is the collector's duty to classify sugars, and this classification is based upon the appraiser's report, which embraces not only the question of value but the general result of his examination, including the character and quality of the sugars. 23 Op. 238.

**36. Same—Right to call for settlement tests.**—There can be no doubt of the collector's right, under section 16 of the customs administrative act, to call for settlement tests, and for practical purposes it is immaterial whether the appraiser obtains this information directly from the importer or through his superior, the collector. *Ib.*

**37. Classification decisions of the Board of General Appraisers—Binding effect of.**—The Secretary of the Treasury and collectors of customs are bound by classification decisions of the Board of General Appraisers, when unappealed from, only so far as such decisions affect the goods immediately before the Board for classification. 25 Op. 81.

38. **Same.**—The Secretary of the Treasury has authority, and it is his duty, to instruct collectors of customs to what extent, if at all, they are to be guided by the conclusions, general doctrines, and expressions contained in any opinion by the Board of General Appraisers, except as regards the merchandise concerning which the decision was made. *Ib.*

39. **Same.**—Where there is conflict between a decision of the circuit court on appeal from the Board of General Appraisers, and a subsequent decision of the Board, the Secretary of the Treasury should give greater consideration to the decision of the court. *Ib.*

40. The appointment of the assistant collector at the port of New York (who was formerly employed by the collector with the approval of the Secretary of the Treasury) should now, by virtue of the effect of section 5596, Revised Statutes, be made by the President with the advice and consent of the Senate. 18 Op. 98.

*c. Chief Officers of Customs.*

41. Neither inspectors nor general agents are "chief officers of the customs," within the meaning of section 4 of the anti-moieties act of June 22, 1874 (18 Stat. 186). 20 Op. 675.

42. The phrase "chief officers of the customs" refers to the collector or acting collector of each collection district, including the surveyor of any district in which there is no collector, and also to the officer legally in charge of any statutorily recognized port, not being the headquarters of a collection district. *Ib.*

*See also* CUSTOMS LAW, IX, h, 442-445; INDIAN TERRITORY, 3.

*d. Deputy Surveyor of Customs.*

43. There is no statutory provision authorizing the appointment of more than one deputy surveyor of customs, at the same time, at each of the ports named in section 2722, Revised Statutes. 19 Op. 629

*e. Appraisers.*

44. The term "appraisers" in the act of March 2, 1883 (22 Stat. 452), does not embrace "assistant appraisers." 17 Op. 585.

45. A report in regard to valuation of imported merchandise signed by an examiner

or clerk appointed pursuant to section 2940, Revised Statutes, and approved by the appraiser, is not in compliance with the requirements of section 2615, Revised Statutes, which requires that the assistant appraiser make such report. 20 Op. 731.

46. **Sugars—Polariscopic test.**—By whom made and reported.—Under Schedule E of the existing tariff law (act of July 24, 1897; 30 Stat. 168), specific rates of duties are laid upon imported sugars graduated according to the polariscopic test. These tests, while made by officers and experts subordinate to the appraiser, are reported to him, and by him, after ascertainment of the quality and value of the sugar, reported to the collector for classification. 23 Op. 238.

47. **Same—Authority to demand settlement tests.**—The appraiser, as the final and chief examining officer, has authority to ascertain, by all reasonable ways and means in his power, not only the actual value of imported merchandise but its character and quality as well; and this right of ascertainment carries with it the authority to demand and secure from sugar importers the settlement tests of all importations of sugar. *Ib.*

48. **Appraiser of customs at Pittsburg, Pa.—Revival of the office.**—The office of appraiser of customs in the collection district of Pittsburg, Pa., having been abolished in 1880 by the Secretary of the Treasury, under the authority conferred upon him by section 2653, Revised Statutes, that officer has no authority to revive it. By abolishing the office the Secretary exhausted all his power in the premises, and Congress alone can recreate it. 24 Op. 613.

CLASSIFICATION DECISIONS OF BOARD OF GENERAL APPRAISERS. *See* CUSTOMS LAW, 16-19.

*f. Inspectors of Customs.*

49. **Services as special deputy marshal—Not entitled to compensation for.**—Where an inspector of customs, while holding that office, rendered service as a special deputy marshal under section 2031, Revised Statutes: Held that he is prohibited by the third section of the act of June 20, 1874 (18 Stat. 109), from receiving any compensation for such service beyond his salary as inspector of customs. 17 Op. 684.

**50. Inspectors of customs can not lawfully be prevented by the local health officers from landing at quarantine stations in the discharge of their duties; but the former, while visiting and remaining at such stations, should observe all reasonable regulations in the interest of public health.** 18 Op. 15.

**51. Same—Reasonable quarantine regulations.**—No local health regulation which denies to inspectors of customs ample opportunities for then and there protecting the public revenue is reasonable. *Ib.*

**52. Compensation—Absence.**—Inspectors of customs are not entitled to receive a per diem compensation under section 2733, Revised Statutes, for periods during which they are absent from duty on account of sickness or for any other cause. 19 Op. 420.

**53. Same.**—The fourth section of the act of March 3, 1883 (22 Stat. 563), with regard to hours of labor and absence of clerks in the several Executive Departments, does not affect the provisions of said section 2733 regulating the compensation of such inspectors. *Ib.*

g. *Examiner.*

**54. The term "examiner,"** as used in sections 2, 3, and 4 of the act of March 2, 1883 (22 Stat. 452), signifies any officer authorized by the fifth section to act in that capacity, and nothing more. 17 Op. 585.

**55. Same—No new officer created.**—It was not the intention of the act to create a new officer to meet its requirements regarding the examination of imported teas. *Ib.*

h. *Weighers.*

**56. Suspension—Removal—Compensation.**—Where a regularly appointed weigher in the customs service was suspended from duty and pay by the collector, under Article 1371 of the General Regulations of 1888, pending the action of the Secretary of the Treasury, and such receiver was subsequently removed by the Secretary, and now claims compensation during the period of suspension and until he received notice of dismissal, *advised*, that payment should be declined until the matter shall have been judicially determined in his favor. 19 Op. 463.

i. *Subordinate Officers.*

**57. Leaves of absence.**—The subordinate officers and employees of the customs service,

wherever employed, and whether they receive an annual or per diem compensation, are entitled to the same privileges of the statute with reference to leaves of absence, as clerks and employees in the Executive Departments at Washington. 22 Op. 78.

j. *In General.*

**58. Customs officers in Porto Rico—Disposition of storage charges, etc.**—Storage charges, fines, penalties, and forfeitures, and other collections, not duties or taxes, made by customs officers in Porto Rico in the administration of the customs laws, should be deposited to the credit of the Treasurer of the United States. 24 Op. 621.

III. **Entry, Appraisal, Bonds, Warehouses, Exportation, Abandonment, etc.**

a. *Entry—Invoice, Declaration, etc.*

**59. Section 2859, Revised Statutes, in regard to entry of imported merchandise, is not repealed by section 9 of the act of June 22, 1874 (18 Stat. 188), or by the act of May 1, 1876 (19 Stat. 49).** 17 Op. 683.

**60. The act of May 1, 1876 (19 Stat. 49), providing for the separate entry of one or more packages contained in an importation of packed packages consigned to one importer, consignee, or agent was not repealed by section 29 of the customs administrative act of June 10, 1890 (26 Stat. 141).** 20 Op. 5.

**61. Same.**—The repeal of section 2841, Revised Statutes, by that act has no effect upon the act of 1876, because the latter forms no part of section 2841. *Ib.*

**62. Same.**—The act of 1876 is of a limited and special character and it is not to be presumed from any general expressions used that Congress had it in contemplation when the statute of June 10, 1890, was passed. *Ib.*

**63. Same.**—The form of oath prescribed by the act of 1876, referring to section 2841, Revised Statutes, is not affected by the subsequent legislation modifying and afterwards repealing that section and substituting a declaration by the importer, consignee, or agent in the place of the former oath. *Ib.*

**64. Manifest—Fee.**—The fee of 25 cents "for receiving manifest of each railroad car or other vehicle laden with goods, wares, or

merchandise from a foreign contiguous territory" was not abolished by section 22 of the act of June 10, 1890 (26 Stat. 140). This question being a doubtful one, was decided in accordance with the departmental practice, founded upon a decision of the Board of General Appraisers. 20 Op. 730.

65. A certified consular invoice is required by law for the admission to entry of imported merchandise not subject to duty, excepting where Congress has expressly dispensed with that requirement. 19 Op. 225.

66. Declaration of cost.—The statement by the manufacturer of merchandise consigned by him or on his account for sale in the United States, declaring the cost of the production of such merchandise, which is required by section 8 of the customs revenue act of June 10, 1890 (26 Stat. 135), to be presented to the collector at the time of the entry of the merchandise, should be signed by the manufacturer himself. The signing of such statement by an agent is insufficient. 19 Op. 655.

67. Same.—The manufacturer is not required to appear in person before the proper consular officer and sign in his presence the statement called for by section 8, in order that it may receive the attestation of such officer. Should the consular officer certify that it has been satisfactorily shown to him that the statement is, as it purports to be, the act of the manufacturer, this would be an attestation of the statement and meet the requirement of the statute. *Ib.*

68. Declaration to invoice.—The person making the declaration to an invoice of goods intended for shipment from a foreign country to the United States under sections 2 and 3 of the customs administrative act of June 10, 1890 (26 Stat. 131), is not required to be actually present before the consul, vice-consul, or commercial agent of the United States in order to authorize such consular officer to certify such invoice. 21 Op. 571.

69. Same.—All that is necessary in order to authorize such consular officer to certify the invoice produced, with the declaration indorsed thereon signed, and with the oath attached, is that he shall be satisfied that the person making the oath thereto is the person he represents himself to be; that he is a credible person, and that the statements made under such oath are true. *Ib.*

70. Same.—Where the consular officer has doubts as to the identity of the person making the declaration, as to his credibility, or as to the truthfulness of the statements set forth in the declaration, he would have the right to require the declarant to come personally before him. *Ib.*

71. Same.—The question as to where and in what manner the oaths to the declarations indorsed on invoices shall be taken is more a matter of regulation or instruction for the government of consular officers than of construction of a statute. *Ib.*

72. Declarations.—The Treasury Department has no authority to insist that declarations upon goods obtained by purchase under section 3 of the act of June 10, 1890 (26 Stat. 131), shall contain the further clause declaring that the prices in the invoice represent the actual foreign-market value on the day of shipment, etc. 22 Op. 405.

73. Bonds.—A customs bond executed in a firm name by a partner duly authorized by power of attorney to execute it is obligatory upon the firm. 20 Op. 311.

74. Penal bond required of agent making entry.—Section 2787, Revised Statutes, requires collectors of customs to take from an agent or person other than the owner making an entry of imported merchandise a bond in the penal sum of \$1,000, with condition that the actual owner or consignee of the merchandise shall deliver a full and correct account thereof according to the terms and specifications of that section. 25 Op. 66.

75. Same.—General bonds of sufficiently large amount may, in special cases, be lawfully accepted by collectors of customs, in lieu of the special bonds of \$1,000 each required by section 2787, Revised Statutes, from agents making entries of imported merchandise for others, requiring them to produce the declaration of the owner in every case where goods may thereafter be imported without the same during a specified period. 25 Op. 177.

76. Right to entry.—Fur-seal skins—Burden of proof.—Section 9 of the act of December 29, 1897 (30 Stat. 227), and the Treasury regulations made in pursuance thereof, which prohibit the importation into the United States of fur-seal skins taken in the waters mentioned in that act, impose upon the importer the burden of showing the right to



entry of any fur-seal skin, and neither an acquittal on the charge of smuggling, nor any other proceeding under the customs revenue laws, has the effect of shifting the burden of proof in the entirely distinct proceeding to forfeit seal skins brought into the United States in violation of that act. 23 Op. 63.

**77. Entry refused—Foreign books copyrighted in the United States.**—The Secretary of the Treasury is authorized and it is his duty, under sections 4956 and 4958, Revised Statutes, as amended by the act of March 3, 1891 (26 Stat. 1106), to refuse entry to importations of a book printed in the original French from type not set within the United States nor from plates made therefrom, where the copyright for the United States was secured by the Paris publisher and afterwards by him assigned to an American house. A dramatic composition may be a book. 23 Op. 353.

**78. Entitled to entry—Goods bearing foreign trade-mark.**—The importation into the United States of an article bearing the genuine trade-mark of the maker, by an importer who is not the owner of the trade-mark, is not forbidden by section 11 of the tariff act of July 24, 1897 (30 Stat. 207), although such trade-mark has been properly registered in the United States and all rights thereunder have been transferred and belong to another party. 24 Op. 551.

**79. Same.**—The purpose of that section is twofold—to protect the domestic manufacturer against encroachment upon his trade-mark, and the public from the imposition of imported articles assuming domestic names. It is the simulation or counterfeit, and not reality or genuineness, at which the section is aimed. *Ib.*

#### b. Appraisal—Reappraisal.

**80. Appearance of importers with counsel—Production of witnesses.**—Statutory provisions (secs. 2614, 2615, 2785, 2902, 2922, 2930, and 2945, Rev. Stats.) relating to the appraisal and reappraisal of imports subject to duty considered, and held that, in the absence of any regulation of the Secretary of the Treasury to that effect, the law does not permit importers to appear before the appraisers, with counsel or otherwise, for the purpose of producing witnesses to be examined in their own behalf, or to cross-examine

witnesses called by such appraisers. The entire matter is under the control of the Secretary, and subject to such rules and regulations as he may from time to time establish in relation thereto. 18 Op. 360.

**81. Coverings.**—Tin cans containing French peas, prepared meats, fish, fruit, vegetables, and milk food—being neither of material nor form designed to evade the duties thereon, nor designed for use otherwise than in the bona fide transportation of goods to the United States—are not subject to the 100 per cent ad valorem duty prescribed by the proviso to the seventh section of the act of March 3, 1883 (22 Stat. 523). 18 Op. 483.

**82. Varnish, compounded in Canada and returned to the United States.**—Varnish, of which a component part of chief value is "distilled spirits" which had been produced in the United States and exported to Canada into warehouse, and, after being compounded into varnish, is returned to the United States, should be appraised according to the general Canadian markets, and not according to Canadian markets for articles in bond. 18 Op. 43.

*See also* IV, a, 170-173.

**83. Same.**—Reconsideration of former opinion (18 Op. 43) in regard to the duty upon certain shellac varnish imported from Canada; and advised that the warehouse value in Canada is to be taken as a basis for computing the duty thereon. 18 Op. 109.

**84. Sugars—Polariscopic test.**—Under Schedule E of the tariff act of July 24, 1897 (30 Stat. 168), specific rates of duties are laid upon imported sugars graduated according to the polariscopic test. These tests, while made by officers and experts subordinate to the appraiser, are reported to him, and by him, after ascertainment of the quality and value of the sugar, reported to the collector for classification. 23 Op. 238.

**85.** It is the collector's duty to classify such sugars, and this classification is based upon the appraiser's report, which embraces not only the question of value, but the general result of his examination, including the character and quality of the sugars. *Ib.*

**86. Appraising officers are authorized to demand and secure from sugar importers the settlement tests of all importations of sugar.** *Ib.*

**87.** There can be no doubt of the collector's right, under section 16 of the customs ad-

ministrative act of June 10, 1890 (26 Stat. 138), to call for such settlement tests, and for practical purposes it is immaterial whether the appraiser obtains this information directly from the importer or through his superior, the collector. *Ib.*

**88. Lead bullion—Assay Treasury Regulations.**—While paragraph 181 of the tariff act of July 24, 1897 (30 Stat. 166), which imposes a duty on imported lead ores, contemplates the determination of the quantity of metal in the ore by assay, by paragraph 182 of that act the determination of the quantity of metal contained in imported lead bullion is to be by official weighing only, and the application of assay to lead bullion under the current Treasury regulations for bonded smelters and refiners is without warrant of law. 24 Op. 45.

**89. Same.—The Attorney-General declines to modify the views and conclusion expressed in his opinion of May 15, 1902 (*ante*, p. 45),** that paragraph 182 of the tariff act of July 24, 1897 (30 Stat. 166), requires the quantity of metal contained in imported lead bullion to be determined by official weighing only, and that the application of assay to lead bullion under the current Treasury Regulations for bonded smelters and refiners is without warrant of law. 24 Op. 569.

**90. Same.—The statutory percentages of refined metal for exportation may not properly be made up of "such portions of metals as the importer may determine."** *Ib.*

**91. The export tax imposed by a foreign government is not one of the "costs, charges, and expenses" referred to in section 19 of the customs administrative act of June 10, 1890 (26 Stat. 139).** 21 Op. 108.

**92. Goods on vessel wrecked.**—Section 2928, Revised Statutes, in regard to appraisal of merchandise taken from a wreck, applies only to goods wrecked while on the voyage to the United States. 21 Op. 121.

**93. The merchandise taken from the wrecked steamer *Paris*, both hull and cargo of which were abandoned to the underwriters, the cargo being lightered from the wreck to the nearest available vessel of the same line, thus completing the interrupted voyage, may be regarded as merchandise taken from a wreck and entitled to entry by appraisement, under section 2928, Revised Statutes.** 22 Op. 542.

**94. Same—Abandonment.**—The provision of section 23 of the customs administrative act of June 10, 1890 (26 Stat. 140), relieving the importer from the payment of duties on damaged goods by abandoning them to the United States refers to loss or damage arising from ordinary causes during the voyage, and not to the case of a wreck and loss or damage thereby. *Ib.*

**95. Denial of reappraisement.**—The action of a collector in denying a reappraisement because the importer refused to answer proper interrogatories propounded to him may be reviewed, first, by the Board of General Appraisers on a protest under section 14 of the act of June 10, 1890 (26 Stat. 137), and next by the circuit court on an application for review under section 15 of that act. 22 Op. 456.

**96. Same.**—The collector is the authority to determine whether an interrogatory is proper and the refusal to answer is justified. *Ib.*

**97. Same.—An importer refusing to answer a proper question respecting imported merchandise has not complied with the requirements of law, and is not entitled to a reappraisement, but the original appraisement becomes final and conclusive under section 17 of the act above named.** *Ib.*

**98. Appraisement of property subject to forfeiture for smuggling, etc.**—When property subject to forfeiture for smuggling or cognate offenses is seized, the appraisement should be in accordance with section 3074, Revised Statutes, and not under section 13 of the customs administrative act (26 Stat. 136). 24 Op. 583.

*See also* CUSTOMS LAW, IX, e.

#### c. Protest.

**99. Payment of duties as well as protest.**—Section 14 of the customs administrative act of June 10, 1890 (26 Stat. 137), requires the importer, if he desires to make a contest, not only to protest but to pay the duties and charges in full within ten days after liquidation where the merchandise is entered for consumption, or to protest within ten days where the merchandise is entered in bond only. 20 Op. 183.

**100. The written protest or notice provided for by the customs administrative act of June 10, 1890, is required only for the**

purpose of instituting a proceeding before the Board of General Appraisers to review the decision of a collector or appraiser. 21 Op. 92.

**101. Not required where duties were paid under mutual mistake of law.**—The decision of an application to withdraw warehoused goods or supplies for vessels under section 16 of the act of June 26, 1884 (23 Stat. 57), is confided by the law in the Secretary of the Treasury. Hence the protest required in section 1 of the act of March 3, 1875 (18 Stat. 469), is not required where duties were paid by mutual mistake of law on coal withdrawn for use on ocean steamers. *Ib.*

**102. Return of duties collected by mistake of law.**—Prior to the customs administrative act of June 10, 1890 (26 Stat. 131), duties collected by mistake of law could not be returned after one year from the time of entry in the absence of a protest by the importer under section 2931, Revised Statutes. 21 Op. 251.

**103. Same—Failure to protest.**—The Secretary of the Treasury is without authority to refund an excess of duties collected under a mistake of law, lawful protest not having been made. 21 Op. 224.

**104. Where matter contained in protest is overlooked.**—The Board of General Appraisers have no jurisdiction after the lapse of nearly two years, to reconsider their decision on a protest entered under the customs administrative act of 1890, on the ground that certain matter contained in the protest was overlooked. It was the duty of the importer to watch for the decision of the Board. 21 Op. 144.

#### d. Damages.

**105. Allowance for breakage, leakage, or damage to wines, cordials, etc.**—The effect of the proviso in the act of March 3, 1883 (22 Stat. 505), declaring "that there shall be no allowance for breakage, leakage, or damage on wines, liquors, cordials, or distilled spirits," was to repeal all the provisions previously in force which authorized such allowance; but it nevertheless permits the duties to be assessed on the actual quantity of merchandise imported, whether in casks or bottles. 17 Op. 613.

**106. Same—Duties assessed on the quantity which actually arrives.**—Where the quantity which actually arrives is found by the customs officers to be less than the invoiced

quantity, a deduction of the excess of the latter over the former, in adjusting the duties, is not an allowance within the meaning of the proviso mentioned. *Ib.*

*See also* 17 Op. 203.

#### e. Warehouses and Warehousemen.

**107. Private bonded warehouse—Right to withhold delivery after payment of duty.**—After the duty on imported goods which have been deposited in a private bonded warehouse has been paid and a withdrawal permit issued, the Government has no further concern with the goods, and the right to withhold or deliver same rests with the warehouseman alone. 21 Op. 232.

**108. Same.**—The collector of customs has no authority to interfere or direct the United States storekeeper to interfere in a controversy between the importers and the warehouseman and deliver the goods. *Ib.*

**109. Private warehouse—Right to refuse delivery.**—The Secretary of the Treasury is under no obligation and can not properly grant authority to compel a warehouse company to deliver certain goods for export, where, notwithstanding the permit of the collector, delivery is refused because of the nonproduction of a warehouse certificate. 22 Op. 152.

**110. Same.**—A warehouse is a private institution in charge of a public officer, and the Secretary of the Treasury may establish rules and regulations not inconsistent with law for the due execution of the laws relating thereto and to secure a just accountability under the same. *Ib.*

**111. Same.**—The private rights of the warehouseman and those having relations with him as such are in no wise affected by this joint custody, providing the rights of the Government in and about the collection of its customs are not interfered with. *Ib.*

**112. Whisky withdrawn from bond, shipped to Bermuda, and transported back to this country.**—Whisky withdrawn from bonded warehouse, under section 3330, Revised Statutes, and acts of June 9, 1874 (18 Stat. 64), and March 1, 1879 (20 Stat. 337), in order to ship it to Bermuda, with the purpose, after landing it there, of transporting it back to this country and entering it either for warehousing or for consumption under section 2500,

Revised Statutes, would not be an exportation within the meaning of section 3330, Revised Statutes, and the act of 1874, and would not, upon return to this country, be entitled to the rights and privileges of imported merchandise under the warehouse laws. 17 Op. 579.

**113. Goods exported in good faith and reimported.**—Where domestic merchandise, exported in good faith, has been imported back again, and is subject to duty, it is entitled to be admitted to entry for storage in a bonded warehouse under section 2962, Revised Statutes. 18 Op. 381.

Opinion of July 7, 1883 (17 Op. 579), distinguished. *Ib.*

**114. Goods imported and warehoused for nearly three years, then withdrawn and exported, and finally reshipped to the United States by a different merchant, there being no evidence that the transaction was a colorable one to evade the tariff laws, may be entered for warehousing as an "original importation" under section 2971, Revised Statutes.** 21 Op. 23.

**115. Repeated rewarehousing.**—Section 5 of the act of March 28, 1854 (10 Stat. 272), in part set forth in section 3000, Revised Statutes, does not authorize repeated rewarehousing. 20 Op. 309.

**116. Same.**—Where merchandise has been rewarehoused in conformity with the regulations and practice of the Department, the action of the Department can not be declared unauthorized. *Ib.*

**117. Warehouses for storage of imported rice.**—The act of March 24, 1874 (18 Stat. 24), concerning bonded warehouses for storage of imported rice is still in force. 21 Op. 474.

**118. Same—By-products.**—Warehousemen of importers' bonded warehouses for the storage and cleansing of imported rice intended for exportation to foreign countries may withdraw for consumption, certain by-products resulting from the manufacture, viz, rice meal and broken rice, instead of exporting them. *Ib.*

**119. Same.**—The duty on these by-products should be assessed upon the proportion of uncleaned rice represented by the by-products, rather than on the latter themselves, regarded as an independent importation. *Ib.*

**120. Imported molasses can not, under paragraph 241 of the act of October 1, 1890 (26 Stat. 584), be refined in bond between March 1 and April 1, 1891, without payment of duty.** The provisions of that paragraph are applicable only to sugars in solid form. 19 Op. 697.

**121. Goods which arrived in a port of the United States on the 30th of June, 1883, and from want of time to make other disposition of them remained on board ship until the next day, are to be regarded as in a public store or bonded warehouse within the meaning of section 10 of the act of March 3, 1883 (22 Stat. 525).** 18 Op. 13.

**122. Removal of goods from vessel to warehouse.**—The Secretary of the Treasury is authorized by section 3 of the act of June 10, 1880 (21 Stat. 173), to modify the form of the contract made with common carriers so as to permit them to remove goods from a vessel and place them in a warehouse or other secure place, provided care be taken to stipulate that their liability as common carriers shall continue until custody and possession of the merchandise has been delivered to and accepted by the collector. 20 Op. 674.

**123. Sale of goods.**—The provision in section 2971, Revised Statutes, requiring merchandise to be sold, is applicable to goods remaining in public store or bonded warehouse beyond three years, as well where the duties thereon have been paid as where they have not been paid. At the end of that period they are to be regarded as abandoned to the Government and sold. 17 Op. 650.

**124. Same.**—The object and requirement of that provision are, however, sufficiently met by the practice of the Department, whereby, in lieu of a formal sale of the goods, the owner, consignee, or agent is permitted to pay the duties, charges, etc., that have accrued thereon and take them away. *Ib.*

#### f. Withdrawal from Bond.

**125. Time for withdrawal can not be extended.**—No officer of the Government has power to extend for one year the time for the withdrawal of certain reimported whisky now in a bonded warehouse. 20 Op. 642.

**126. When goods are entered or withdrawn for consumption, all duties then charged against them, including penal duties, must be paid before the goods are released from Government custody.** 21 Op. 418.

**127. Duties based upon weight at time of withdrawal.**—The second proviso in section 50 of the tariff act of October 1, 1890 (26 Stat. 624), providing that when duties are based upon the weight of merchandise deposited in any public or bonded warehouse, said duties shall be levied and collected upon the weight of said merchandise at the time of its withdrawal, applies to importations under the act generally upon which duties are levied by law, and not merely to importations made prior to the taking effect of the act. 20 Op. 80.

**128. Reimported whisky when withdrawn from bond** is taxable according to the number of gallons at the time of importation. 20 Op. 722.

**129. The by-products, such as rice meal and broken rice, resulting from the cleansing of imported rice in importers' bonded warehouses intended for exportation may be withdrawn for consumption instead of exportation.** 21 Op. 474.

**130. Goods imported before the act of August 27, 1894 (28 Stat. 509), and then deposited in store as "unclaimed merchandise," under section 2965, Revised Statutes, may be withdrawn for consumption at the new rates of duty at any time within three years from the date of original importation, as long as they remain unsold. If sold, however, the duties to be deducted from the proceeds of sale are those of the act of 1890.** 21 Op. 116.

**131. Withdrawal from warehouse—Supplies for vessels.**—The decision of an application to withdraw warehoused goods or supplies for vessels under section 16 of the act of June 26, 1884 (23 Stat. 57), is confided by the law in the Secretary of the Treasury. 21 Op. 92.

**132. Withdrawal of liquors from bonded warehouses for consumption on foreign war vessels.**—Section 15 of the act of July 24, 1897 (30 Stat. 207), does not permit the withdrawal, free from internal-revenue duty and the requirements relating to revenue stamps, of liquors from bonded manufacturing warehouses for consumption aboard war vessels of foreign nations. 23 Op. 418.

**133. Same—Not an exportation.**—The withdrawal of goods from such a warehouse for consumption on war vessels of foreign nations would not be an exportation of such goods within the meaning of the act of 1897. *Ib.*

**134. Same—When the privilege is granted.**—The privilege granted to foreign vessels

of war in our ports, under section 2982, Revised Statutes, of purchasing supplies from the public warehouses, duty free, when that privilege is reciprocated in the ports of such foreign nations to our own national vessels, is limited to the purchasing in the bonded warehouses of supplies deposited therein pending withdrawal for consumption. The duty referred to, from which supplies so purchased shall be free, is the import duty. *Ib.*

*g. Removal and Destruction of Merchandise in Bond.*

**135. Articles of merchandise imported into the United States and held in a bonded warehouse for use in the manufacture of articles for exportation in accordance with section 15 of the tariff act of July 24, 1897 (30 Stat. 207), may be removed from such warehouse and destroyed in the presence of an officer designated by the collector of the port and accounted for as waste, and the manufacturer relieved from the payment of duty thereon.** 24 Op. 58.

*h. Transportation in Bond.*

**136. Immediate transportation.**—Under the immediate transportation act of June 10, 1880 (21 Stat. 173), the Secretary of the Treasury may require common carriers desiring to avail themselves of its privileges to file bonds to accept and transport within a definite fixed period of time all merchandise offered under the act. 21 Op. 369.

**137. Immediate transportation—At places without "necessary officers" at passage of act of June 10, 1880.**—New legislation is not required by the proviso in section 7 of the act of June 10, 1880 (21 Stat. 174), in order to give the privilege of immediate transportation to any of the places named in that section which at the time of the passage of that act was without the "necessary officers" therein referred to, but which thereafter has such officers assigned thereto. 18 Op. 120.

*i. Importation in Sealed Cars.*

**138. The Secretary of the Treasury has authority under section 3102 of the Revised Statutes to impose similar regulations as to invoices for cars sealed in a contiguous foreign country as are imposed by the immediate-transportation act of 1880 (21 Stat. 198); and**

an entry such as is required under the immediate-transportation act may be required by regulation under the anti-smuggling act (18 Stat. 186). 20 Op. 86.

**139. Merchandise imported into a contiguous foreign country and then imported into the United States.**—Section 2 of the act of June 27, 1864 (13 Stat. 197), providing for the continuous passage to destination without inspection, of goods, wares, and merchandise, etc., imported into this country in sealed cars from any contiguous foreign country, applies as well to merchandise imported into a contiguous country and then imported into the United States as to merchandise produced in that foreign country and then imported into the United States. 20 Op. 26.

**140. Same.**—While the Secretary of the Treasury can not require a formal entry of goods sealed in a foreign country at a frontier port, he is not concluded by the seals from requiring an examination of the contents of the cars so secured on arrival at the frontier ports, and he may direct such an examination, notwithstanding the seals, as may seem to him best adapted to prevent fraud. *Ib.*

**141. Same.**—There is no obligation by force of the treaty of Washington which prevents a modification of the regulations of the Secretary of the Treasury authorized by articles 29 and 30 thereof, in so far as they affect goods and merchandise imported into this country for our consumption. That treaty had no reference whatever to the manner of the inspection and examination of such goods and merchandise in the country of their destination. *Ib.*

**142. Same.**—Sections 2 and 3 of the act of 1864 probably contemplated that the sealing of cars should be performed by consular officers. The Secretary of the Treasury has no authority by law, and therefore is not required, to appoint new officers especially charged with the duty. *Ib.*

*j. Transportation of Goods Through the United States.*

**143. The Secretary of the Treasury has no power to prohibit the transfer of goods through the United States destined to Mexico.** 20 Op. 725.

**144. The Secretary of the Treasury has no authority to appoint special inspectors of sealed cars.** 20 Op. 26.

**145. The Secretary of the Treasury may have an examination made of cars sealed in a foreign country for passage through this country.** *Ib.*

**146. The Secretary of the Treasury may modify the regulations authorized by articles 20 and 30 of the treaty of Washington with regard to sealed cars.** *Ib.*

*k. Goods Shipped from One Port to Another in the United States Through Foreign Territory.*

**147. In the case of merchandise of domestic production shipped at ports on the Great Lakes to other ports in the United States, by routes through Canadian territory, the issuance of a certificate by the collector of customs showing that the merchandise so shipped is of domestic production is not authorized by law.** 18 Op. 261.

*l. Importation, Exportation, Reimportation.*

**148. If to reduce duty, it is within the statute.**—Where a quantity of wool was imported at Boston from Liverpool, and two days later was withdrawn for exportation to St. John, New Brunswick, whence (having been carried thither) it was immediately brought back to Boston: *Held* that if the purpose of the above withdrawal, etc., was to create a second port of importation with the object of reducing the duty, the transaction was fictitious, and that Liverpool remains the last port or place of exportation within the meaning of the statute. 17 Op. 528.

**149. Exportation and reimportation.**—Certain liquors which had been manufactured in the United States, in a bonded manufacturing warehouse, out of both domestic and imported spirits that were removed to such warehouse without payment of either the internal-revenue or customs duties, and which had been exported therefrom, were imported into New York and assessed with the duty prescribed by the statute, Schedule H (22 Stat. 504), as foreign liquors: *Advised* that—the liquors being of the manufacture of the United States and once exported—section 2500, Revised Statutes, affords the rule under which to levy duties thereon. 19 Op. 243.

**150. Same.**—That section does not contemplate the levying of different rates of duty on

the several different ingredients of which an article may be composed; it is the product that is to be taxed, not its constituent ingredients. *Ib.*

*See also* CUSTOMS LAW, 164.

**151. Exportation of refined metals.**—The statutory percentages of refined metal for exportation, taken from imported lead bullion, not properly be made up of "such portions of metals as the importer may determine." 24 Op. 569.

**152. Lead ores—Reexportation—Duties.**—The six months within which the refined metal produced from imported lead-bearing ores must be reexported or the regular duties paid thereon, under section 29 and paragraph 181 of the tariff act of July 24, 1897 (30 Stat. 166), means six months from the date of the receipt of the ore by the manufacturer at his bonded smelting establishment, and not six months from the date of the receipt of the ore at its port of entry. 23 Op. 46.

#### *m. Abandonment of Goods.*

**153.** The operation of section 23 of the customs administrative act of June 10, 1890, is not confined to damaged goods, and goods not damaged may be abandoned to the United States and the importer thereof relieved from the payment of duty. 21 Op. 326.

**154. Same.**—It is not the intent of Congress that the United States should in any case exact as duties an amount greater than the value of the property imported. *Ib.*

ABANDONMENT OF GOODS. *See also* CUSTOMS LAW, 153–154.

BONDS OF AGENT MAKING ENTRY. *See* CUSTOMS LAW, 72–74.

IMMEDIATE TRANSPORTATION. *See* CUSTOMS LAW, III, h.

#### IV. Duties, Exemption, Classification, etc.

##### *a. Duty, Rate and Amount— Dutiable Value.*

**155.** "Alizarine assistant," an article used in dying, is dutiable as a chemical compound, at 25 per centum ad valorem, and not under the similitude clause of section 2499, Revised Statutes. 18 Op. 106.

**156.** The duty on the by-products of rice placed in importers' bonded warehouses for

storage and cleansing, which is withdrawn for consumption, should be assessed upon the proportion of uncleaned rice represented by the by-products rather than on the latter themselves, regarded as an independent importation. 21 Op. 474.

**157. Duties on champagne imported in magnums.**—In determining the rate of duty to be imposed on champagnes, wines, and other liquors under the tariff act of July 24, 1897 (30 Stat. 174), paragraph 295 of that act should be read in conjunction with paragraph 296. The former paragraph fixes the rate of duty to be imposed upon all wines included within the class therein named, when imported in legal packages; while the second proviso of the latter paragraph determines the rate of duty on all wines and other liquors when imported in other than legal packages. 23 Op. 48.

**158. Same—Rate of duty.**—The proper duty to be collected upon the magnums involved in this inquiry, is a duty of \$8 for each magnum, without any excess duty, but with the statutory duty added for the bottles, as if imported empty. *Ib.*

**159.** Confectionery known as "fruit tablets" is dutiable under the clause in the act of March 3, 1883 (22 Stat. 502), namely: "Sugar candy not colored, five cents per pound." 18 Op. 606.

**160.** The article known as "Cooper's Sheep Dipping Powder" is dutiable at 50 per cent ad valorem, under the act of March 3, 1883 (22 Stat. 494). 18 Op. 552.

**161. Ginger ale bottled—Ale or beer bottled.**—Under the clause in the act of March 3, 1883 (22 Stat. 505), providing a duty of 20 per cent ad valorem on ginger ale or ginger beer, etc., no separate or additional duty is to be collected on the bottles or jugs containing the same. But where the ale or beer is bottled, the ad valorem duty should be levied upon the wholesale value thereof as bottled ale or beer in the general market of the country whence it is imported. 18 Op. 478.

**162. Reimportation of liquors manufactured in the United States and exported without paying internal-revenue tax.**—In February and March, 1886, certain liquors (which had been manufactured in the United States, in a bonded manufacturing warehouse established under the provisions of section 3433, Revised

Statutes, out of both domestic and imported spirits that were removed to such warehouse without payment of either the internal revenue or customs duties, and which liquors had been exported therefrom) were imported into New York and assessed with the duty prescribed by the statute (Schedule H) as foreign liquors: *Advised* that—the liquors being of the manufacture of the United States and once exported—section 2500, Revised Statutes, affords the rule under which to levy duties thereon. 19 Op. 243.

163. *Same.*—That section does not contemplate the levying of different rates of duty on the several different ingredients of which an article may be composed; it is the product that is to be taxed, not its constituent ingredients. *Ib.*

164. A lot of rum which had been manufactured within the United States from imported molasses, was exported December 3, 1883, and drawback thereon allowed, and reimported October 20, 1884. *Held* to be dutiable under section 2500, Revised Statutes, and not under the act of March 3, 1883 (22 Stat. 488), furthermore, that the importers are entitled to remove the same under section 3433, Revised Statutes. 18 Op. 82.

165. *Same.*—The word "imported" in section 3433, Revised Statutes, is used generally, and includes "reimported." *Ib.*

166. In determining the meaning of "iron ore," as used in the provision of the act of March 3, 1883 (22 Stat. 497), which imposes a duty thereon, regard should be had to the commercial signification of the term, as Congress must be understood to have used the same in its commercial sense. 18 Op. 466.

167. Imported lead ore is dutiable, under paragraph 199 of the act of October 1, 1890 (26 Stat. 581), at the rate of  $1\frac{1}{2}$  cents a pound, irrespective of the quantity of lead which the ore may contain. 19 Op. 690.

168. *Same.*—The words "all other ores," as used in the proviso of that paragraph, mean all ores other than those known commercially as lead ores. *Ib.*

169. Dutiable value—Lead bullion.—While paragraph 181 of the tariff act of July 24, 1897 (30 Stat. 166), which imposes a duty on imported lead ores, contemplates the determination of the quantity of metal in the ore by assay, by paragraph 182 of that act the determination of the quantity of metal contained

in imported lead bullion is to be by official weighing only, and the application of assay to lead bullion under the current Treasury regulations for bonded smelters and refiners is without warrant of law. 24 Op. 45.

*Affirmed*, 24 Op. 569.

170. Sawed boards, planks and deals, etc., of pine wood are dutiable at \$2 per thousand feet under the act of March 3, 1883 (22 Stat. 501). 18 Op. 68.

171. Shellac varnish, composed of a mixture, made in a Canadian bonded warehouse, of the gum with alcohol distilled in this country and exported without payment of any internal revenue tax here and no exaction of duty upon it in Canada because in bond there, is dutiable under Schedule D, of section 2504, Revised Statutes, which declares that "on all compounds or preparations of which distilled spirits is a component part of chief value there shall be levied a duty not less than that imposed upon distilled spirits," namely, \$2 per proof gallon. 17 Op. 105.

172. *Same.*—In determining which is the component of chief value, the value of each ingredient in the domestic markets of the United States should be the guide. *Ib.*

173. *Same.*—Varnish, of which a component part of chief value is "distilled spirits" which had been produced in the United States and exported to Canada into warehouse, and, after being compounded into varnish, is returned to the United States, should be appraised according to the general Canadian markets, and not according to Canadian markets for articles in bond. 18 Op. 43.

*See also* VI—Refund, Drawback.

174. Wool-tops, imported in the ordinary condition of scoured wool, are not subject to the penal double duty imposed by the act of March 3, 1883 (22 Stat. 508), on "wool of the sheep, etc., which shall be imported in any other than ordinary condition as now and heretofore practiced," etc. 18 Op. 534.

175. Basis for estimating ad valorem duties.—Review of legislation fixing the basis for estimating ad valorem duties, passed prior to the act of March 3, 1883 (22 Stat. 488). 17 Op. 633.

176. *Same.*—Actual market value.—The only change effected by section 7 of that act is to exclude from such basis all costs and charges which, under the law as it previously stood, were required to be added to



the current or actual market value or wholesale price of the merchandise in the principal markets of the country whence the same was imported, or of the country of production or manufacture, as the case might be, thus making such current or actual market value, etc., the *sole basis* for estimating such duties. *Ib.*

**177. Same.**—By current or actual market value or wholesale price, as used in the statute, is to be understood the amount of money the article commanded in the foreign market in the condition in which it is there customarily sold and purchased. *Ib.*

**178. Same.**—The cost of boxes or coverings with which goods are ordinarily prepared for sale in the foreign market, and in which they are usually sold and purchased there, is an element of the actual market value of the goods. *Ib.*

**179. Same.**—What becomes of the box or covering, in the course of trade, after the importation, does not affect the question of dutiable value. *Ib.*

*See also* 210-213, 222-226.

**180. Basis of computation.**—The values of foreign coins, as annually estimated and proclaimed by the Secretary of the Treasury under the provision of section 3564, Revised Statutes, constitute the only lawful basis for computing the invoiced value of importations, and duties on the latter are necessarily required to be collected on the values of foreign coins so estimated and proclaimed. 18 Op. 322.

**181. The cost of winding on spools, or skeining, yarn or thread,** is one of the usual charges for preparing and packing the merchandise for transportation, which, by section 7 of the act of March 3, 1883 (22 Stat. 523), are not to be included as part of the dutiable value of such merchandise. 18 Op. 515.

**182. The expense of brokerage, auctioneer's commissions, and packing,** incurred at the place of exportation, are, by section 7 of the act of March 3, 1883 (22 Stat. 523), not to be estimated in determining the dutiable value of imported merchandise. 18 Op. 288.

**183. Merchandise in bond, or within a port of the United States when new law goes into effect—Costs and charges.**—Merchandise which is in bond, or on shipboard within the limits of a port of entry, on August 1, 1890, the

date on which the customs administrative act of June 10, 1890 (26 Stat. 131), goes into effect, is **not subject to duty upon a valuation that includes the costs and charges mentioned in section 19 of that act.** As to such merchandise, the act of March 3, 1883 (22 Stat. 488), by which the costs and charges referred to are excluded as an element of dutiable value, remains in force and determines the duty thereon. 19 Op. 602.

**184. Same.**—Commissions on imported merchandise which do not grow out of the costs, charges, and expenses mentioned in said section 19 of the act of June 10, 1890, form **no part of the dutiable value of merchandise under that act.** *Ib.*

**185. The new rates of duty imposed by the tariff act of August 27, 1894 (28 Stat. 509), do not apply to any goods theretofore entered for warehouse, unless the goods are withdrawn for consumption within three years from the date of original importation.** 21 Op. 116.

**186. Goods imported before that act and then deposited in store as "unclaimed merchandise,"** under section 2965, Revised Statutes, may be withdrawn for consumption at the new rates of duty at any time within three years from the date of original importation, as long as they remain unsold. If sold, however, the duties to be deducted from the proceeds of sale are those of the act of 1890. *Ib.*

**187. The second proviso in section 50 of the tariff act of October 1, 1890 (26 Stat. 624), providing that when duties are based upon the weight of merchandise deposited in any public or bonded warehouse, said duties shall be levied and collected upon the weight of said merchandise at the time of its withdrawal, applies to importations under the act generally upon which duties are levied by law, and not merely to importations made prior to the taking effect of the act.** 20 Op. 80.

APPRAISAL. *See* CUSTOMS LAW, III, b.

GOODS WHICH ARE IN A PORT OF THE UNITED STATES WHEN NEW LAW GOES INTO EFFECT. *See* CUSTOMS LAW, 121, 183.

b. *Goods Subject to Duty.*

**188. Bituminous coal, imported for the use of the Government, is dutiable under paragraph 432 of the tariff act of October 1, 1890 (26 Stat. 600).** 20 Op. 314.

189. Books imported for the purpose of sale are not free of duty under paragraph 413 of the tariff act of August 27, 1894 (28 Stat. 538), even though imported to take the place of books which had been previously imported by the same person, and upon which duties had been paid by him, and which he had afterwards sold to a State library. 21 Op. 301.

190. Foreign magazines and newspapers transported by mail from Canada into the United States, addressed to dealers, for the purpose of sale by them, or of being by them distributed among subscribers, are dutiable. 17 Op. 159.

191. Same.—The postal convention with Canada and section 15 of the act of March 3, 1879 (20 Stat. 359), were not intended to affect existing tariff laws. *Ib.*

192. Periodical publications bound in stiff covers in regular book form (each volume containing several numbers of any such publication) lose their character as periodicals and become dutiable as books under the act of March 3, 1883 (22 Stat. 510). 18 Op. 315.

193. Braids—Feather-stitched braids.—The interpretation acquiesced in hitherto by the Department of Justice by a letter to the Secretary of the Treasury, of date January 26, 1893, that "feather-stitched braids" are dutiable as braids under paragraph 354 of the tariff act of 1890 (26 Stat. 593), should also be applied to the term "braids" as used in paragraph 324 of the tariff act of March 3, 1883 (22 Stat. 506). Pending cases of protest against a different ruling should be settled in accordance with this settled practice. 20 Op. 621.

194. The duty on the by-products, such as broken rice and rice meal, withdrawn for consumption from importers' bonded warehouses should be assessed upon the proportion of unclean rice represented by such by-products. 21 Op. 474.

195. Clothing purchased in Canada.—Persons crossing into Canada for no other purpose than to purchase clothing there, and immediately returning, are not entitled to introduce the same free of duty as "personal effects" under paragraph 752 of the act of October 1, 1890 (26 Stat. 611). 21 Op. 3.

196. A crank shaft and steamer's shafts brought to this country from a foreign country to repair a vessel of that country lying disabled in our ports are articles imported into the country within the meaning of section

2503 of the Revised Statutes and section 2502 of the Revised Statutes as amended by the tariff act of 1883 (22 Stat. 491, 499), and no refund of duty is allowable thereon. 20 Op. 194.

Affirmed, 20 Op. 257.

197. Steel shaft landed in United States for use on foreign vessel.—A steel shaft can not be landed and kept on the dock of the Cunard Steamship Company in the United States, for possible use on the steamships *Etruria* and *Umbria* in case of emergency, without payment of duty thereon. 24 Op. 533.

Opinion of February 24, 1899 (22 Op. 360), distinguished.

198. Foreign-made grain bags.—Section 7 of the act of February 8, 1875 (18 Stat. 308), admitting foreign-made bags free of duty "after having been exported from the United States filled with grain and returned empty," was repealed by section 55 of the said act of October 1, 1890 (26 Stat. 625). 20 Op. 630.

199. Same.—Articles not mentioned on free list.—Section 2 of the act of October 1, 1890 (26 Stat. 602), is exhaustive upon the subject of free entry of goods, so that an article not mentioned in said section can not be held to be nondutiable because of any previous law granting it exemption from duty. *Ib.*

200. Merchandise from the island of Porto Rico introduced into the ports of the United States is by law required to pay the same duties that would be charged upon merchandise imported from a foreign country, and the President has no authority to alter or modify the laws under which such duties are required to be paid. 22 Op. 561.

201. Same.—The admission of merchandise into the ports of the United States from such conquered territory is governed solely by existing laws passed by Congress, and the President has no power to add to or detract from the force and effect of such laws. *Ib.*

202. Picture frames containing oil paintings which are imported into this country for exhibition purposes, are not to be treated as parts of "works of art" and are therefore not entitled to entry free of duty under paragraph 702 of the tariff act of July 24, 1897 (30 Stat. 203). 25 Op. 276.

203. Where the refined metal set aside as the product of imported lead ore is not reexported within six months from the date of the receipt of the ore, the regular duties must be

paid on the imported ore as provided by section 29 of the tariff act of July 24, 1897 (30 Stat. 151). 22 Op. 285.

**204. Refined sugar manufactured in this country from raw sugar imported under the tariff act of 1883 and exported before April 1, 1891, with a drawback of the duties collected on the importation, and again imported after April 1, 1891, is subject to duty to the full amount of the drawback allowed on the sugar on its exportation.** 20 Op. 77.

**205. A steam pump and boring apparatus, used in deep prospecting for oil and coal, with connecting iron tubes, etc., brought into this country by a coal and petroleum seeker for the purpose of pursuing his profession here, do not come within the meaning and intent of the clause in the act of March 3, 1883 (22 Stat. 521), exempting from duty "implements, instruments, and tools of trade, occupation, or employment of persons arriving in the United States," and should not be admitted free.** 18 Op. 538.

**206. Imported scrap tobacco is dutiable as manufactured tobacco under the act of March 3, 1883 (22 Stat. 503).** 17 Op. 646.

**207. Attaches to tobacco, irrespective of bale or package.**—Clause in Schedule F of the act of March 3, 1883 (22 Stat. 503), imposing a duty upon "leaf tobacco," considered and commented on; and *advised* that the duty attaches to tobacco of the statutory description, irrespective of the bale or package in which it is imported, and that, consistently with the terms of the statute, **bales and packages may be broken up in order to sort such different grades of leaf tobacco as may be contained therein.** 18 Op. 1.

**208. The article called toluidine, being a product of coal tar, is within the provision of the act of March 3, 1883 (22 Stat. 493), covering "all preparations of coal tar, not colors or dye, not specially enumerated or provided for," and is dutiable thereunder.** 18 Op. 383.

**209. Reimported whisky when withdrawn from bond is taxable according to the number of gallons at the time of importation.** 20 Op. 722.

**210. The cost of boxes or coverings with which goods are ordinarily prepared for sale in the foreign market, and in which they are usually sold and purchased there, is an element of the actual market value of the goods. What becomes of the box or covering, in the**

**course of trade, after the importation, does not affect the question of dutiable value.** 17 Op. 633.

**211. Coverings—Match boxes.**—Boxes in which safety and ordinary matches are usually imported are not dutiable as part of the merchandise which they contain, but (being composed in part of a material designed for a use other than that of a bona fide transportation of their contents) they are subject to the duty of 100 per cent ad valorem prescribed by the proviso in section 7 of the act of March 3, 1883 (22 Stat. 523). 18 Op. 510.

*See also* 226, spools.

**212. Coverings of imported merchandise.**—The proviso in section 7 of the act of March 3, 1883 (22 Stat. 523), subjecting to a duty of "100 per centum ad valorem upon the actual value of the same," coverings of imported merchandise designed for use otherwise than in the bona fide transportation of such merchandise to the United States, etc., applies to free as well as to dutiable importations. 19 Op. 18.

**213. Boxes or cases in which certain philosophical instruments were imported, being of dimensions sufficient to hold one instrument, were "designed for use otherwise than in the bona fide transportation" of their contents to the United States, and consequently are dutiable at 100 per cent ad valorem under the proviso of section 7 of the act of March 3, 1883 (22 Stat. 523). Such boxes were intended to follow their contents into consumption, and to be used therewith both as a protection to them and as furnishing a convenient means of carrying them about.** 19 Op. 543.

**214. Dutiable articles purchased by the United States from the importers while in bond remain dutiable and the duties must be paid before delivery.** Paragraph 385 in the free list of the act of August 27, 1894 (28 Stat. 537), applies to articles purchased by the United States in foreign markets and thence imported for its own use. 21 Op. 243.

**215. In cases of forfeiture.**—Regular duties may be exacted on an importation of foreign goods, notwithstanding the goods have been seized and forfeited for a violation of section 9 of the customs administrative act of June 10, 1890 (26 Stat. 135), and the whole of the proceeds from their sale applied to the use of the United States. 24 Op. 1.

**216. Same.**—There is no authority for the practice of the Treasury Department to exact duties, when forfeiture prevails, only in those cases which arise under section 32 of the tariff act of July 24, 1897 (30 Stat. 211, 212), and not in other customs-revenue cases involving forfeiture. *Ib.*

*See also* CONTRACTS, 74.

*c. Goods, etc., not Dutiable—  
Exemptions.*

**217. A bicycle taken abroad by a citizen for his use, and brought back with him on his return to this country, is not subject to duty, being a "personal effect" (see Free List, Rev. Stat. p. 489). 17 Op. 679.**

**218. Bicycles are "personal effects" within the meaning of our tariff acts, and therefore exempt from duty under the act of 1890 (26 Stat. 611). 17 Op. 679 adhered to. 20 Op. 648.**

**219. The opinions previously rendered by this Department (17 Op. 679; 20 Op. 648) as the dutiability of bicycles adhered to. 20 Op. 719.**

**220. Bonnets, hats, and hoods, etc., and braids, plaits, flats, laces, etc.—Act not applicable to materials out of which made.**—The words "not specially enumerated or provided for in this act," used in Schedule N of the act of March 3, 1883 (22 Stat. 511), in the clauses fixing a duty upon "bonnets, hats, and hoods for men, women, children, composed of chip, grass," etc., and "upon braids, plaits, flats, laces, etc., used for making or ornamenting hats, bonnets, hoods," etc., apply to articles of the description mentioned, and not to the material out of which such articles are made. 17 Op. 672.

**221. Burnt bones intended and fitted for other uses in the arts than that of imparting color are duty free (Rev. Stats. pp. 473, 483), although in fact they are black. 17 Op. 676.**

**222. Coverings, etc.—Sacks, boxes, or coverings of any kind, the duty on which as charges was repealed by section 7 of the act of March 3, 1883 (22 Stat. 523), are not subject to duty, either separately from or as a part of the value of the goods imported therein, excepting where they come under the proviso in that section or fall within some special provision of law. 18 Op. 468.**

**223. Same.**—The 100 per cent ad valorem, mentioned in said proviso, can be im-

posed upon sacks, boxes, or other coverings of imported merchandise only where their material or form justifies the conclusion that they were used as coverings to evade duties, or where they were designed or contemplated to be applied to some use other than that of coverings for imported merchandise, even though their use as coverings only should continue after the goods had passed beyond the custom-house to the market or consumer. *Ib.*

**224. Same.**—The mere fact that the boxes, sacks, etc., are, after importation, put to other uses, if such uses were not designed at or before the time of importation, and if there was no design to evade duty in using them as coverings, will not subject them to the 100 per cent ad valorem duty. *Ib.*

**225. Coverings.**—Certain boxes or cases containing zithers, piccolos, cornets, trial glasses, etc., used as coverings for such instruments, Held not subject to the 100 per cent ad valorem duty prescribed in the proviso of section 7 of the act of March 3, 1883 (22 Stat. 523). 18 Op. 479.

*See also* 178, 179, 210–213.

**226. Spools on which thread is wound for transportation or shipment are duty free, under the provisions of section 7 of the act of March 3, 1883 (22 Stat. 523). 18 Op. 496.**

*See also* 212, Match boxes.

**227. The "Foxhall" gold and silver cup, having similitude in "material, quality, and texture, and the use to which it may be applied" to a "medal" made of those materials, is free of duty under sections 2499 and 2502, Revised Statutes, as enacted by the act of March 3, 1883 (22 Stat. 489). 18 Op. 62.**

**228. Goat's hair.**—Hair of the common goat, which is unfit for combing purposes, should be admitted free of duty under the provisions in the free list for hair of horses and cattle, and hair of all kinds not specifically enumerated, act of March 3, 1883 (22 Stat. 519). 18 Op. 527.

**229. Iron turnings** are not dutiable as manufactured iron. 17 Op. 647.

**230. Where certain law reports, printed in the year 1840–41, were imported into the United States in an unbound condition, the printed sheets not being even stitched together: Held that they came within the provision of the act of March 3, 1883 (22 Stat. 518), exempting from duty "books \* \* \* bound**

or unbound \* \* \* which shall have been printed and manufactured more than twenty years at the date of importation," and were therefore not dutiable. 18 Op. 461.

**231. Where meat of American production, cured with foreign salt, was exported to Europe (the duty upon the salt being refunded), and subsequently brought back to this country:** *Advised* that, on the duties upon the salt being re-refunded, the meat may be admitted duty free under the act of March 3, 1883 (22 Stat. 514). 18 Op. 139.

**232. Philosophical and scientific apparatus.**—An instrument designed for the reproduction of artists' models, statuary, and decorative architecture, imported for the purpose of being temporarily exhibited as a philosophical or scientific apparatus for the promotion of industry in the United States, and to be exported within six months after its importation, may fairly be regarded as a "philosophical or scientific apparatus" within the meaning of paragraph 701 of the tariff act of July 24, 1897 (30 Stat. 203), and is entitled to be admitted free of duty. 24 Op. 28.

**233. Portland cement for construction of gun emplacements.**—The discretion committed to the Secretary of War with reference to the admission of certain materials free of duty by the act of June 6, 1896 (29 Stat. 260, first paragraph), is sufficiently broad to embrace and assume, as for or by the United States, such purchases abroad made by contractors as appear to him to be proper. 22 Op. 98.

**234. Porto Rican products.**—All articles of Porto Rican origin exported from Porto Rico to foreign countries after the passage of the Foraker Act of April 12, 1900 (31 Stat. 77), may, since the proclamation of the President on July 25, 1901, doing away with the 15 per cent duty imposed under section 3 of that act, be imported into the United States free of duty under paragraph 483 of the tariff act of July 24, 1897 (30 Stat. 195), provided the articles have not been advanced in value or improved in condition by any process of manufacture or other means. 24 Op. 55.

**235. Tobacco grown in Porto Rico** after the cession of that island to the United States and brought into this country for warehousing, and afterwards exported to Canada and thence returned to the United States, is within the benefits of paragraph 483 of the act of July 24,

1897 (30 Stat. 195), but subject to the internal-revenue tax provisions of section 3 of the act of April 12, 1900 (31 Stat. 77). 24 Op. 612.

**236. Paintings of a native Porto Rican residing abroad.**—A native Porto Rican, an artist by profession, although temporarily living in France on the 11th day of April, 1899, is, under section 7 of the act of April 12, 1900 (31 Stat. 79), a citizen of Porto Rico, and, as such, is an American artist, whose paintings upon importation into the United States are entitled to the privileges provided in paragraph 703 of the tariff act of July 24, 1897 (30 Stat. 203). 24 Op. 40.

**237. Printed matter, other than books, received by mail from foreign countries, under the provisions of postal treaties or conventions, is declared free of duty by section 17 of the act of March 3, 1879 (20 Stat. 360); and no distinction is there made between such as is mailed to subscribers for their own use and such as is mailed to dealers for sale.** 17 Op. 187.

**238. Same.**—There is no warrant of law for inquiry by the Treasury Department as to whether such printed matter is received as merchandise, nor for the imposition of duty thereon. *Ib.*

**239. Same.**—Books which are admitted to the international mails, exchanged under the provisions of the Universal Postal Union Convention, may be delivered to addresses upon the payment of the duty thereon. *Ib.*

**240. The Secretary of the Treasury has the power to permit the transfer and delivery to the steamship *Kaiser Wilhelm II* of a piece of machinery known as a "screw boss," brought into the harbor of New York by a sister ship for the purpose of replacing a defective piece in the former, without exacting the payment of duty.** 22 Op. 360.

**241. Shellfish, such as oysters, Chinese abelones, etc., when prepared by drying or pickling, are entitled to free entry under the free list, Sundries, in the act of March 3, 1888 (22 Stat. 521).** 19 Op. 401.

**242. Silver ore, ground, is not dutiable under the tariff act of March 3, 1883 (22 Stat. 488).** 18 Op. 148.

**243. Spanish publications—Philippine Islands.**—All such Spanish scientific, literary, and artistic works, not subversive of public order, which are published in Spain and thence imported into the Philippine Islands as were

entitled to free entry into those islands under the Spanish tariff in force when our Government began to exercise authority therein, are entitled, under Article XIII of the treaty of peace with Spain (30 Stat. 1760), to continue to be admitted free of import duty and of the duty or charge of 2 per cent ad valorem for harbor and commercial improvement charges under section 20 of the Philippine tariff, for the period of ten years from the date of the exchange of the ratifications of the treaty, which privilege includes the bindings in which such works, if publications, are inclosed, provided such bindings were previously admitted free. 23 Op. 115.

**244. Goods coming from Tutuila.**—In view of the convention concluded by the United States, Great Britain, and Germany on December 2, 1899 (31 Stat. 1878), the island of Tutuila is not a foreign country within the meaning of our tariff laws, and goods coming into the United States from that island are not subject to duty. 23 Op. 629.

**245. Works of art—American artist.**—An artist of foreign birth, but who has resided in the United States for fourteen years and has declared his intention to become a citizen thereof, may properly be treated as an American artist within the meaning of the provision in the act of March 3, 1883 (22 Stat. 521), declaring free of duty "works of art, painting, etc., the production of American artists." 18 Op. 163.

**246. Goods shipped prior to March 15, 1892,** the date named in the President's proclamation for the suspension of free importation of enumerated articles from certain countries, are to be admitted free of duty. 20 Op. 357.

**247. Abandonment of damaged goods.**—The provision of section 23 of the customs administrative act of 1890 (26 Stat. 140), relieving the importer from the payment of duties on damaged goods by abandoning them to the United States refers to loss or damage arising from ordinary causes during the voyage, and not to the case of a wreck and loss or damage thereby. 22 Op. 542.

**248. Section 2 of the act of October 1, 1890** (26 Stat. 602), is exhaustive upon the subject of free entry of goods, so that an article not mentioned in said section can not be held to be nondutiable because of any previous law granting it exemption from duty. 20 Op. 630.

#### d. *Classification of Goods.*

**249. Classification.**—Imports in the tariff acts may be "nonenumerated," "generally enumerated," or "specially enumerated;" each phrase marks a different degree of precision in the description of the imports. 19 Op. 272.

**250. Same.**—When described as a species, they are "specially enumerated," and such enumeration when made determines the classification. *Ib.*

**251. Same.**—When described as a genus, or in general terms, they are merely enumerated, and, in the absence of a specific enumeration, such general enumeration determines the classification. One such general enumeration may also be more specific than another. *Ib.*

**252. Same.**—When not described either "specifically" or "generally," they are "non-enumerated." *Ib.*

**253. Same.**—Only "nonenumerated" imports are subject to classification under section 2499, Revised Statutes. *Ib.*

**254. Appollinaris mineral water.**—In the light of the information presented, Appollinaris mineral water is regarded as an artificial mineral water, and dutiable as such. 17 Op. 176.

**255. An importation of bird of paradise feathers,** being composed of natural feathers which are neither dressed, colored, nor manufactured, is not within paragraph 328 of the tariff act of August 28, 1894 (28 Stat. 534). 21 Op. 541.

**256. Black of bone or ivory drop black—Bones crude and not manufactured.**—Distinction between the expression in Schedule M (Rev. Stat., p. 473), "black of bone or ivory drop black," and the expression (Free List, *ibid.*, 483), "bones crude and not manufactured; burned, calcined, ground, or steamed," pointed out; and held that burnt bones intended and fitted for other uses in the arts than that of imparting color are duty free, although in fact they are black. 17 Op. 676.

**257. Chinese shoes composed of felt, leather, and cotton** should be classified under the twelfth clause of Schedule K of the act of March 3, 1883 (22 Stat. 488, 508), which provides generally for "all goods \* \* \* and manufactures of every description, composed wholly or in part of worsted, the hair of the

alpaca, goat or other animals \* \* \* not specially enumerated or provided for." 19 Op. 273.

258. Chinese shoes in which silk is the component material of chief value should be classified under the fourth clause of Schedule L of the act of 1883 (22 Stat. 488, 510). *Ib.*

259. Opinion of April 3, 1889 (19 Op. 272), respecting the classification for duty of certain descriptions of Chinese shoes, explained; and *advised* that the opinion referred to does not justify any change in the administration of the customs laws, except as to importations like those concerning which it was written. 19 Op. 301.

260. *Same.*—The underlying principle of the opinion is that "enumeration must be exhausted before assimilation can be resorted to," and that the shoes described were enumerated in the twelfth clause of Schedule K of the act of March 3, 1883 (22 Stat. 488, 508.) *Ib.*

261. *Same.*—As there were not two enumerative clauses which might be applicable to the import, the last clause of section 2499 was inapplicable. *Ib.*

262. *Same.*—The prior clauses of section 2499 were limited to nonenumerated articles, and under the facts were not applicable. *Ib.*

263. Coriander seed should be classified under paragraph No. 636, Tariff Index, as "seeds, aromatic, which are not edible," etc. 19 Op. 75.

264. Flax.—The decision of the Treasury Department of April, 1871, holding that the article known as New Zealand flax is dutiable as flax not hackled or dressed, should, under Schedule J of the act of March 3, 1883 (22 Stat. 507), be modified so as to classify the article for duty under the provision for sunn, sisal-grass, and other vegetable substances not specially enumerated or provided for. 19 Op. 334.

265. "Household effects"—Cows.—The term "household effects" as used in paragraph 504 of the act of July 24, 1897 (30 Stat. 196), properly includes cows when kept for household use. 23 Op. 310.

266. *Same.*—That term includes not only those things necessarily kept within the house, but comprises everything that contributes to the use or convenience of a household. *Ib.*

267. *Same*—Treasury Department's ruling.—The Attorney-General recommends

that the ruling heretofore adopted by the Treasury Department that cows are not "household effects" be changed to hold that they are such effects. *Ib.*

268. Certain articles of imported merchandise, consisting of T-beams, girders, joists, columns, posts, and other manufactures of iron, which, when put together, constitute a floor-frame for one or more floors of a building, should not be classified under the tariff act of March 3, 1883 (22 Stat. 488, 501), as an entirety as a manufacture, but the several parts should be classified under such several specific provisions of the act as are applicable to each class of merchandise in the entry. 18 Op. 475.

269. The term "iron ore," as used in the act of March 3, 1883 (22 Stat. 497), is generic; embracing all the different species of iron ore, regardless of their price, value, or accidental component chemical ingredients. It is the iron ore of commerce. 18 Op. 530.

270. Iron bar ends, consisting of the crop ends, from 1 to 4 inches long, cut off from Swedish bar iron in the process of manufacturing the bars, have not been "in actual use" so as to justify their classification as scrap iron under Schedule C of the act of March 3, 1883 (22 Stat. 497). 19 Op. 103.

271. The phrase "forgings of iron and steel," as used in clauses Nos. 163 and 167 (T. I., new), of the act of March 3, 1883 (22 Stat. 498), includes forgings made of iron and forgings made of steel, and is not limited to articles composed of both iron and steel combined in the same forging. 19 Op. 157.

272. Steel chains used for bicycle gearing should be classified for duty under the provision in the act of March 3, 1883 (22 Stat. 499), for "chain or chains of all kinds, made of iron or steel," etc., and not as "manufactures, articles, or wares, not specifically enumerated or provided for" (22 Stat. 501). 19 Op. 527.

273. *Advised* that if certain lap robes or carriage robes, sometimes called railway or traveling rugs, were commercially known at the time of the passage of the act of March 3, 1883 (22 Stat. 488), as mats or rugs, they should be classified under a certain clause of Schedule K of that act, providing for "Carpets and carpetings of wool, etc., and mats, rugs," etc.; but that if not so known, nor by any other designation provided for, they

should be classified according to the component material. 19 Op. 104.

**274. Mahogany boards and planks** are not dutiable as manufactures of mahogany, under the clause in Schedule D (act of March 3, 1883 (22 Stat. 501), imposing a duty on "manufactures of cedar wood," etc.; but they fall within the designation of lumber in the clause in same schedule which imposes a duty on "sawed boards, planks, deals," etc., and are dutiable under the latter clause. 18 Op. 535.

**275. Sawed mahogany boards** are not dutiable under Schedule D (act of March 3, 1883, 22 Stat. 501) as "manufactures of mahogany," but are dutiable under the provision of that schedule "for all other articles of sawed lumber," etc. Opinion of Attorney-General Garland of January 21, 1887 (18 Op. 535), concurred in. 19 Op. 366.

**276. "Medicinal soap"** is not dutiable as "proprietary medicines," but as soaps not otherwise provided for at 20 per cent ad valorem, or at 25 per cent as a medicinal preparation or compound. 18 Op. 344.

**277. Advised,** that the classification of roll paper heretofore adopted under paragraph 392, Tariff Index, new, should be adhered to. 19 Op. 59.

**278. Silk—Chief value.**—The word "chief," as used in the provision of section 1 of the act of February 8, 1875 (18 Stat. 307), imposing a duty of 60 per cent ad valorem on all goods, wares, and merchandise made of silk, or of which silk is a component material of chief value, etc., means greater than either of the other materials; not greater than their aggregate. 17 Op. 337.

**279.** Where certain merchandise, consisting of a fabric composed of silk, cotton, and worsted, met all the requirements of Schedule L of the act of March 3, 1883 (22 Stat. 510), and also fulfilled all the conditions imposed by Schedule K of the same act for classification for duty thereunder: *Held* that under section 2499, Revised Statutes, it should be classified for duty under Schedule L, which imposes the higher rate. 18 Op. 367.

**280.** The word "wool," as used in paragraph 297 of the tariff act of 1894 (28 Stat. 531), refers to hair of the sheep only, and the new duties upon articles made of the hair of other animals went immediately into effect upon the passage of the act. 21 Op. 66.

**281. Same.**—The phrase "manufactures of wool" in the above paragraph does not include articles of which wool is a component material but of which it is not the material of chief value. *Ib.*

**282. Same.**—The phrase in question having been given a restrictive meaning in prior tariff acts, there is a presumption, in the absence of anything to the contrary, that Congress intended it still to have the same significance. *Ib.*

**283. Same.**—All doubts arising under the act are presumptively to be resolved in favor of the lower rate of duty, save where the act mentions or describes the same article in two different places, when the higher rate governs. *Ib.*

#### *e. Discriminating Duties.*

**284.** Paragraph 608 of the tariff act of August 27, 1894 (28 Stat. 544), imposing a discriminating duty on salt imported from a country which imposes a duty on salt exported from the United States, does not violate the "most favored nation clause" in the treaty of May 1, 1828, with Prussia. 21 Op. 80.

**285.** As to whether a discriminating duty should be imposed under the act of 1894 upon salt imported from Germany, which country imposes a duty in the nature of an internal excise tax on salt exported from the United States: *Quære.* 21 Op. 377.

**286. Diamonds imported into the United States from Canada, not in the usual course of strictly retail trade,** which were the productions of a foreign country not contiguous to the United States, are subject to a discriminating duty of 10 per cent under section 22 of the tariff act of July 24, 1897 (30 Stat. 209). 21 Op. 591.

**287. Same.**—In determining the liability of the diamonds to the discriminating duty, it is not necessary to ascertain the mode of conveyance used in transporting them into the United States from Canada. *Ib.*

**288.** Certain goods came from Japan via Vancouver, B. C., and thence by railroad through Canada to Chicago in cars sealed at Vancouver by a United States consular officer: *Held* not to be subject to a discriminating duty, as section 4228, Revised Statutes, is not repealed by section 22 of the Dingley tariff act of July 24, 1897 (30 Stat. 209). 21 Op. 597.



**289.** The purpose of this section (section 22 of the Dingley act) was to secure to United States vessels the transportation of goods by sea by discriminating against transportation in other vessels to the United States, and also to prevent evasion to a contiguous country. *Ib.*

**290.** Same.—To hold that there should be a discrimination by different duties upon importations, direct or indirect, under section 22 of the above act, would be to put a new purpose in the law and destroy its unity. This is not compelled by its language or any mischief intended to be remedied. *Ib.*

**291.** Same.—Section 22 of this act and section 4228, Revised Statutes, as amended, are not co-extensive in scope, therefore are complements of each other. *Ib.*

**292.** Same.—Section 4228, Revised Statutes, is in effect made a proviso to section 22 of the Dingley tariff act by the discriminating duties act of July 24, 1897 (30 Stat. 214), and as such is not repugnant to the latter section. *Ib.*

**293.** Same.—The operation of section 22 commences with its passage and continues until it is suspended according to section 4228, Revised Statutes, and again takes effect if the reciprocal exemptions of foreign nations be withdrawn. *Ib.*

#### *f. Additional Duty.*

**294.** Goods in bond over one year.—Where the date of original importation of merchandise in bond was more than one year prior to August 1, 1890, the date when the act of June 10, 1890 (28 Stat. 131), went into effect, such merchandise is subject to the "additional duty of 10 per centum" imposed by section 2970, Revised Statutes, by virtue of the saving clause in section 29 of said act of June 10, 1890, which saves to the Government all rights that existed in its behalf when that act took effect. 19 Op. 668.

*See also IX, b, 387, etc.*

#### *g. Proclamation.*

**295.** Effect—Power of the President.—The President has no power to issue the proclamation provided for in section 3 of the act of October 1, 1890 (26 Stat. 612), to take effect *in futuro*, nor has he the power to reimpose duties on one or more of five articles

enumerated in said section but not on the others. In the proclamation the particular country on whose products the duties are to be reimposed should be named. 20 Op. 290.

### **V. Payment, Collection, and Liquidation of Duties.**

#### *a. Payment.*

**296.** The payment of duties and charges on goods entered for consumption, as well as the protest, must be made within ten days after their liquidation if the importer desires to contest the rate of duty assessed. 20 Op. 183.

#### *b. Collection of Duty.*

**297.** The "collection of the revenue" under the superintendence of the Secretary of the Treasury within the meaning of section 249, Revised Statutes, relates to the proceedings of the collectors and their subordinates, and not to those of district attorneys. 20 Op. 714.

**298.** On goods prohibited from entry.—The Treasury Department is not required by the statutes to levy and collect duty or its equivalent on goods the importation of which is specifically and absolutely prohibited. 24 Op. 556.

**299.** Appropriation for collection can not be expended for erection of a building.—The Secretary of the Treasury is not authorized to employ any part of the appropriation for collecting the revenue from customs in the erection of a temporary structure at a collection port for the purposes of the customs service. 19 Op. 607.

**300.** Same.—No building, even of a temporary character, to be used for storage purposes, can be erected at the public expense without special authority from Congress. *Ib.*

**301.** Sale of goods.—The provision in section 7129 Revised Statutes, requiring merchandise to be sold, is applicable to goods remaining in public store or bonded warehouse beyond three years, as well where the duties thereon have been paid as where they have not been paid. At the end of that period they are to be regarded as abandoned to the Government and sold. 17 Op. 650.

**302.** Same.—The object and requirement of that provision are, however, sufficiently met by the practice of the Department, where-

by, in lieu of a formal sale of the goods, the owner, consignee, or agent is permitted to pay the duties, charges, etc., that have accrued thereon and take them away. *Ib.*

*c. Liquidation—Reliquidation.*

**303. Premature liquidation — Reliquidation.**—Where, notwithstanding the instruction of the Secretary of the Treasury that collectors of customs should delay final liquidation of duties on certain merchandise until further orders, duties were nevertheless liquidated and subsequently reliquidated: *Held*, such original liquidation was complete and subsisting until changed by reliquidation. 24 Op. 34.

**304.** The Secretary of the Treasury is authorized under section 1 of the act of March 3, 1875 (18 Stat. 469), to order a reliquidation of the assessment of duties in the interest of the importer and to direct a return of the papers by the Board of General Appraisers to the collector where the duties were assessed and collected upon errors of fact, discovered within one year from the date of payment, protest and appeal having been duly made. 21 Op. 152.

**305.** Section 14 of the act of June 10, 1890 (26 Stat. 137), did not in any way limit the power of the collector of customs to reliquidate duties in the interest of the Government within one year after entry. 21 Op. 334.

*d. Deposit of Duties.*

**306.** All duties paid to a collector must be placed to the credit of the Treasurer of the United States. 21 Op. 345.

**VI. Return or Abatement of Duties, Fees, etc.**

*a. Refund, Abatement.*

**307. Limitation.**—Section 10 of the act of March 3, 1883 (22 Stat. 525), relating to refund, extends only to goods which had not been in bonded warehouse more than three years at the date that act took effect. 17 Op. 650.

**308. Same.**—Sections 2971 and 2977, Revised Statutes, place a limitation upon the privilege of exportation with refund of duties, and require that it shall be exercised within three years from the date of importation; otherwise the privilege is lost. *Ib.*

**309. Same.**—The provision in section 2971, Revised Statutes, requiring merchandise to be sold, is applicable to goods remaining in public store or bonded warehouse beyond three years, as well where the duties thereon have been paid as where they have not been paid. At the end of that period they are to be regarded as abandoned to the Government and sold. *Ib.*

**310. Same.**—The object and requirement of that provision are, however, sufficiently met by the practice of the Department, whereby, in lieu of a formal sale of the goods, the owner, consignee, or agent is permitted to pay the duties, charges, etc., that have accrued thereon and take them away. *Ib.*

**311. Mutual mistake of fact.**—The Secretary of the Treasury is authorized to make a refund of duties where there was an error due to a mutual mistake of fact. 21 Op. 454.

**312. Mistake of fact.**—The authority of the Secretary of the Treasury to refund duties erroneously collected, on the ground of mistake, is to be restricted to mistake of fact. 24 Op. 34.

**313.** The question whether another country pays a bounty on the exportation of sugar can not properly be called a pure question of fact. It is a question of mixed fact and law. *Ib.*

**314. Same—Common-law mistake of fact.**—A mistake in such a question does not arise upon an error of fact within the meaning of the concluding proviso to section 1 of the act of March 3, 1875 (18 Stat. 469), defined in 21 Opin. 224, to be a common-law mistake of fact. *Ib.*

**315. Mistake of law—Protest.**—The Secretary of the Treasury is without authority to refund an excess of duties collected under a mistake of law, lawful protest not having been made. 21 Op. 225.

**316. Same.**—The cases in which the Secretary of the Treasury is authorized to make such refunds, in the absence of a proper protest, are the following: First, when the duties, as provisionally fixed and paid upon entry of the goods, called "unascertained duties," are reduced upon the final liquidation (sec. 24, act of June 10, 1890, 26 Stat. 140); second, for mere clerical error (*id*); third, for errors of fact (sec. 1, act of Mar. 3, 1875, 18 Stat. 469). *Ib.*

**317. Same.**—The "errors of fact" referred to in section 1 of the act above referred to,

are mistakes of fact within the meaning of the common law—that is, **mutual mistakes of facts.** *Ib.*

**318. Same.**—For a mutual mistake of law the importer has no remedy. *Ib.*

**319.** Prior to the customs administration act of June 10, 1890 (26 Stat. 131), duties collected by mistake of law could not be returned after one year from the time of entry in the absence of a protest by the importer under section 2931, Revised Statutes. 21 Op. 251.

Opinion of September 21, 1895 (21 Op. 224), reaffirmed. *Ib.*

**320. Protest.**—Moneys improperly exacted from and paid by vessels proceeding under section 29 of the act of June 26, 1884 (23 Stat. 59), to unlade at places other than a port of entry, may be refunded by the Secretary of the Treasury, without formal protest by the applicant, in cases where application has been made within one year of such payment. 19 Op. 646.

**321. Protest.**—A mistake on the part of the Treasury Department in estimating the equivalent of the Spanish pound, or libra, in the absence of due protest by the importers, is not sufficient to warrant a refund of the excess of duties paid under such erroneous estimate. 21 Op. 454.

**322. Where importer did not bring suit.**—The Secretary of the Treasury is not authorized under section 3012½, Revised Statutes, to refund excess of duty illegally exacted, where the importer, though having made due protest and appeal, did not bring suit. 17 Op. 336.

**323. Same—Reaffirmed.**—Opinion of April 20, 1882 (17 Op. 336), on the power of the Secretary of the Treasury to refund duties erroneously exacted, reaffirmed. 17 Op. 642.

**324. Same.**—Section 3012½, Revised Statutes, confers upon him power to refund *sub modo* only; i. e., upon appeals heard by him under section 2931, Revised Statutes, when made in the form and within the time therein specified. *Ib.*

**325. Excess of duties erroneously exacted.**—The Secretary of the Treasury has power to refund excess of duties erroneously exacted, upon the dismissal of the suits brought to recover such excess. 17 Op. 657.

**326. Supplies withdrawn from vessels—No protest.**—The Secretary of the Treasury has

no authority under section 1 of the act of March 3, 1875 (18 Stat. 469), to refund duties erroneously collected, but without formal protest, on certain warehoused coal; but he is authorized to make such refund on coal withdrawn for use on ocean steamers, where the duties were paid by mutual mistake of law. 21 Op. 92.

**327. Same.**—The decision of an application to withdraw warehoused goods or supplies for vessels under section 16 of the act of June 26, 1884 (23 Stat. 57), is confided by law in the Secretary of the Treasury; hence the protest required by section 1 of the act of March 3, 1875 (18 Stat. 469), is not required where duties were paid by mutual mistake of law on coal withdrawn as above. *Ib.*

**328.** The Secretary of the Treasury has no power to refund penal duties which have been paid into the Treasury, on the ground that they were incurred without willful negligence or an intention of fraud on the part of the importer. 21 Op. 320.

**329. Same.**—Section 20 of the anti-moiety act of June 22, 1874 (18 Stat. 190), confers no power upon the Secretary of the Treasury to refund any duties, penal or otherwise. *Ib.*

**330. Additional duties remitted after having been paid into the Treasury.**—Where a customs entry was made in June, 1900, and the additional duties levied and collected thereon were remitted by the Secretary of the Treasury on the ground of a manifest clerical error, but at the time of the remission such duty had been paid into the Treasury: *Held* that under section 24 of the customs administrative act of June 10, 1890 (26 Stat. 140), the Secretary of the Treasury has authority to refund out of an appropriation for that purpose the additional duties which accrued by reason of a manifest clerical error upon an entry within a year from the time of their payment. The authority to refund in such case is a necessary consequence of the authority to remit. 23 Op. 442.

Opinion of March 13, 1896 (21 Op. 320), distinguished. *Ib.*

**331. Costs.**—Refund due an importer in case of judgment against the United States for illegal assessment of duties does not include costs. 20 Op. 273.

**332. Interest.**—No authority exists for the payment of interest upon refunds made in con-

formity with judgments contained in cases of appeal under section 15 of the customs administrative act of June 10, 1890 (26 Stat. 131). 20 Op. 238.

**333.** Cement barrels being deemed nondutiable charges, it is recommended that the instructions of the Treasury Department of July 20, 1885, be so amended as to apply to cases of exaction of duties on such barrels where the value thereof was added by the importer at the time of entry under a requirement made by the order of April 10, 1884, as contained in the circular of that Department of April 12, 1884. 18 Op. 363.

**334.** A crank shaft and steamer's shafts brought to this country from a foreign country to repair a vessel of that country lying disabled in our ports are articles imported into the country within the meaning of section 2503 of the Revised Statutes and section 2502 of the Revised Statutes as amended by the tariff act of 1883 (22 Stat. 491, 499), and no refund of duty is allowable thereon. 20 Op. 194.

Reaffirmed. 20 Op. 257.

**335.** Loss caused by freezing.—The provisions of section 2984, Revised Statutes, authorizing the abatement or refund of duty on imported merchandise which, under the circumstances therein stated, is injured or destroyed by accidental fire or other casualty, extend to a loss caused by freezing. 18 Op. 519.

**336.** Goods delivered and afterwards destroyed by fire.—Refund of duties is not allowable under section 2984, Revised Statutes, on merchandise which, pending further examination and appraisement, and upon proper bond being given, has been delivered to the importer, who stored it in his warehouse, where it was destroyed by fire. That section contemplates merchandise which at the time of its destruction is in the custody of the officers of the customs. 18 Op. 578.

**337.** Remission.—The Secretary of the Treasury has no power to remit any part of duties strictly so called, however erroneously they may have been assessed, but he may remit the "additional duties" provided for by section 7 of the act of June 10, 1890 (26 Stat. 134), as they are penalties and not duties. 20 Op. 660.

See also CUSTOMS LAW, 196.

#### b. Drawback, Fees.

**338.** "Drawback moneys" are duties—payment to the importer or the person to whom he has transferred his rights, of a part of the duties which have been paid by him upon receiving his goods. 21 Op. 255.

**339.** The term "custom-house broker" in section 23 of the tariff act of 1894 (28 Stat. 552), includes persons dealing in drawback matters exclusively, as well as those who combine all branches of custom-house work. Such a broker, when his license has been revoked, can not thereafter deal directly with the customs officials, except when acting for themselves as principals. *Ib.*

**340.** The authority to collect drawback may be delegated by a manufacturer to a general selling agent or to some attorney at law, but such a person must conduct his business through a licensed broker unless he obtains himself a license. *Ib.* (258.)

**341.** The person entitled to the drawback under section 3019, Revised Statutes, is the exporter of the goods—i. e., the owner and shipper or consignee thereof to the foreign port—and he may collect it by his duly authorized agent. 19 Op. 638.

**342.** Same.—Where the shipper acts only as the agent of the owner, the drawback belongs to the latter; and if the shipper is without authority from the owner to receive the drawback, it should be paid to the owner. *Ib.*

**343.** Same.—The power to make regulations for the ascertainment of the person to whom the drawback is payable, conferred upon the Secretary of the Treasury by said section, is a power to declare the rules of evidence upon which the Government officers will act in determining who that person is; and the only limitation upon it is that its exercise shall be reasonable. *Ib.*

**344.** Same.—It would be a reasonable regulation to declare that the shipper (the consignee in the bill of lading), in the absence of any evidence to the contrary, will be regarded as the owner or exporter of the goods and as entitled to the drawback. *Ib.*

**345.** The additional duty imposed by section 7 of the customs administrative act of June 10, 1890 (26 Stat. 131), is not subject to drawback upon the exportation of the article, but must be regarded in the light of a penal duty. 20 Op. 247.

**346.** The exportation of alcohol with the intention of its reimportation, in order to take advantage of the drawback privilege, is to be regarded as colorable only. The alcohol is forfeitable, the persons engaged in the transaction are punishable and there is no right to drawback. 21 Op. 501.

**347.** Same.—If, however, the exportation was genuine, and with intent to dispose of the alcohol abroad, so that upon its arrival there it is to be regarded as absorbed in the general mass of foreign commodities, the subsequent importation of the goods in such cases is proper. *Ib.*

**348.** Same.—Imported articles of domestic origin are to be regarded as "imported materials" within the meaning of section 22 of the act of August 28, 1894 (28 Stat. 551), when their prior importation was not merely colorable. *Ib.*

**349.** Coal—Used on vessels.—The provision in the act of March 3, 1883 (22 Stat. 511), allowing a drawback on bituminous coal imported into the United States, which is afterwards used for fuel on steam vessels of the United States engaged in the coasting or foreign trade, is repealed by the act of October 1, 1890 (26 Stat. 567, 625). 19 Op. 687.

**350.** Same.—Withdrawal from bond for use on vessels.—The term "supplies," as employed in section 16 of the act of June 26, 1884 (23 Stat. 57), includes coal. *Ib.*

**351.** Certain car brakes, springs, and lighting apparatus were imported into the United States for the purpose of being used as parts of the equipment of certain railroad cars to be manufactured in this country for export. They were not installed in the cars, but were present for inspection and were shipped in their original packages, or were repacked and shipped, with the parts of the cars to which they were subsequently to be attached: *Held* that such articles were not used "in the manufacture of articles manufactured or produced within the United States," within the meaning of section 30 of the act of July 24, 1897 (30 Stat. 211); and, as the articles were removed "from the custody and control of the Government," they are within the inhibition of section 3025, Revised Statutes, and are not now entitled to drawback under any provision of law. 25 Op. 125.

**352.** Coal imported and used as fuel on vessel plying between New York and Honolulu.—

Honolulu is a Pacific port of the United States within the meaning of the tariff act of July 24, 1897 (30 Stat. 151, 190), and coal imported into the United States which is afterwards used for fuel on board a vessel propelled by steam plying between the ports of New York and Honolulu and registered under the laws of the United States, is entitled to drawback under paragraph 415 of that act. 24 Op. 6.

**353.** Cotton bales—Burlaps.—Imported burlaps, on which duty has been paid, when used as coverings on the so-called "roundlap" bales of cotton, are not, when reexported, entitled to drawback under section 30 of the tariff act of July 24, 1897 (30 Stat. 211), for the reason that the bale is not an article manufactured or produced within the meaning of that section. It is merely a package of material peculiarly constructed which may be resolved into covering and contents. 24 Op. 575.

**354.** The question of drawbacks upon the exhibits of foreign Governments at the World's Fair of 1893 is governed by section 11 of the act of April 25, 1890 (28 Stat. 64), and not by section 3025, Revised Statutes. 21 Op. 36.

**355.** Camel's hair noils, resulting from the separation of imported camel's hair and noils, were not entitled to drawback as a manufactured article under section 25 of the tariff act of October 1, 1890. 21 Op. 159.

**356.** Camel's hair noils.—The separation of imported camel's hair into "tops" and "noils" by combing, for the purpose of preparing the material for manufacture, does not result in such "noils" becoming a distinct manufactured article and entitled to drawback within the meaning of section 30 of the tariff act of July 24, 1897 (30 Stat. 211). 24 Op. 53.

**357.** The drawback law contemplates the manufacture of a separate and complete article which is not merely the finished material of a further stage. *Ib.*

**358.** Oil cake.—A drawback is allowable under section 22 of the tariff act of August 27, 1894 (28 Stat. 551), on oil cake made from imported linseed. 21 Op. 109.

**359.** Oil cake.—Linseed, which was imported into the United States while the act of October 1, 1890 (26 Stat. 567), was in force, but was not withdrawn from warehouse until the act of August 27, 1894 (28 Stat. 509), went into

effect, duties being paid under the later act, and the linseed manufactured into oil cake and exported while the act of 1894 was still in force, is entitled to drawback under the provisions of section 22 of the act of 1894 (28 Stat. 551). 23 Op. 395.

**360.** Oil cake produced from imported linseed.—The prohibition contained in paragraph 285 of the tariff act of October 1, 1890 (26 Stat. 586), prevents the allowance of drawback under section 22 of the tariff act of August 27, 1894 (28 Stat. 551), on oil cake produced from linseed imported and entered for consumption under the provisions of the former act, but exported after the act of 1894 went into effect. 25 Op. 115.

**361.** Same.—In a mass of lead, of which 90 per cent is foreign in origin and 10 per cent domestic, the domestic lead can be regarded neither as a mere incident to the other nor as small enough in amount to be disregarded and is not entitled to drawback. 21 Op. 110.

**362.** Same.—Drawback is allowable under section 25 of the act of October 1, 1890 (26 Stat. 617), only in cases where the article manufactured or produced can be so separated chemically or mechanically into its component materials that the relative portions of each material may be ascertained without reference to past books of account. *Ib.*

**363.** Same.—The above section is intended to apply only to articles made of two or more materials. *Ib.*

**364.** White lead made in this country from a mixture of domestic and imported pig lead, obtained from foreign and domestic lead ores, is not entitled upon exportation to drawback under section 25 of the act of October 1, 1890 (26 Stat. 617), because that part of the lead which came from the imported ore does not so appear in the completed product that its quantity or measure can be ascertained in the manner contemplated by that act. 21 Op. 229.

21 Opinions 110, reaffirmed. *Ib.*

**365.** Drawback on articles exported, made in part from imported and in part from domestic materials.—The provision of section 25 of the act of October 1, 1890 (26 Stat. 617), allowing a drawback on articles exported which are made in part from imported and in part from domestic materials, deals only with the ascertainment of the quantity or measure of the imported material existing in the completed

article, and has nothing to do with the identification of such materials. 22 Op. 111.

**366.** Same.—The proviso of this section does not prescribe how the imported materials shall appear, except that they shall so appear that the quantity and measure thereof may be ascertained. *Ib.*

**367.** Same.—Ascertainment of quantity and measure is an act of the mind, and the required appearance is therefore not a visual but a mental presentation. *Ib.*

**368.** Same.—The meaning of the proviso is that where the article exported is made in part from domestic materials, the imported materials shall so appear in the completed article—that is, be shown to the satisfaction of the customs officers to exist in the completed article—that the quantity or measure thereof may be ascertained. *Ib.*

**369.** Same.—Satisfactory proof having been presented to the customs officers to establish the identity of certain imported lead ore used in the manufacture of pig lead, to ascertain the quantity thereof, and to compute the duties paid thereon, and it being satisfactorily shown that the imported lead so appears in the exported product that the quantity or measure thereof may be ascertained, a drawback is allowable. *Ib.*

**370.** A drawback may be allowed of the duties paid on imported lead, refined, in a bonded warehouse, subsequently withdrawn therefrom on payment of duties, for domestic consumption, as provided in section 29 of the act of July 24, 1897 (30 Stat. 210), upon the exportation of articles manufactured wholly from such lead under the provision of section 30 of that act. 22 Op. 119.

**371.** Same.—Identification of the imported lead.—Section 29 of the above act, which provides that 90 per cent of the refined metal shall be set aside each day, conclusively distinguishes the product of the foreign from that of the domestic ore, and identifies the lead set aside as imported lead. *Ib.*

**372.** Lead.—The drawback to be allowed under section 30 of the act of July 24, 1897 (30 Stat. 211), on refined lead withdrawn from bond, manufactured and exported, the same being originally part of a quantity of base bullion that had been imported and upon which regular duties had been paid under paragraph 182 of the same act, should be based on the quantity of refined lead thus used, plus 2 per

**cent for waste** (that is, an amount equal to the duties paid on the materials actually used), less the statutory 1 per cent of such duties. 23 Op. 131.

**373. Antimony—Drawback requirements.**—Section 29 of the act of July 24, 1897 (30 Stat. 210), which regulates the smelting or refining for exportation of crude metal in bonded warehouses, requires that each day a quantity of the refined metal equal to 90 per cent of the amount of imported metal in crude form smelted or refined that day be set aside; not that 90 per cent of the refined product must be set aside. This is true of antimony, notwithstanding its volatile nature, which makes it impossible, as it is claimed, to recover from the bullion 90 per cent of the antimony which it contains as shown by assay. 23 Op. 134.

**374. Imported Canadian wheat.**—Where upon the exportation of a product manufactured in the United States from a combination of domestic material and foreign material which has paid duty, the quantity or measure of the foreign material actually present in the completed article can be identified to the satisfaction of the customs officials by the evidence of books of account, or otherwise, the exporter is entitled under section 30 of the tariff act of July 24, 1897 (30 Stat. 211), to drawback of the duties paid upon the imported material thus ascertained to be actually present in the completed article. 25 Op. 344.

**375. Same.**—The word "ascertained," as used in the proviso to said section 30, is obviously used to describe knowledge which is obtained from evidence, and not merely that which is obtained from the exercise of the senses. *Ib.*

**376. Same.**—The word "appear," as used in that section, does not require that the imported materials should appear in the sense of being seen in the completed articles, but only in the sense of being proven to be present in the completed articles. *Ib.*

Opinion of July 13, 1898, in regard to drawback on lead (22 Op. 111), reaffirmed. *Ib.*

**377. Computation of drawback on imported wheat.**—In computing the drawback on the export of flour made from imported wheat, the relative values of the flour and other products at the time and place of manufacture should be used as the basis of calculation. 25 Op. 374.

**378. Same.**—Where only a part of the products from imported wheat is exported, the proportionate value of the same for drawback purposes should be determined without allowing anything for the increased price such part would bring in domestic markets because of the privilege of drawback. *Ib.*

**379.** It being possible to ascertain the quantity of imported sugar present in fruit canned for export, drawback on such sugar should be allowed under section 30 of the act of July 24, 1897 (30 Stat. 211). 22 Op. 127.

**380. Automobile reexported in form of an express wagon.**—An importer is not entitled to a refund of duties paid upon an automobile imported for use in the construction of an express wagon upon the reexportation of the completed wagon, such wagon not being a manufacture within the meaning of section 3019, Revised Statutes, and of section 30 of the act of July 24, 1897 (30 Stat. 211). 23 Op. 625.

**381. Same.**—To entitle an importer to a refund of duties under those statutes it is necessary that the ultimate completed article shall be wholly manufactured in this country, and the mere combination of a completed motor with or its construction into a vehicle does not constitute a new and distinct manufacture within the meaning of the drawback laws. *Ib.*

**382. Illegal fees.**—A person who at different times between April, 1882, and October, 1887, paid to customs officers, by deductions from drawbacks allowed him, alleged illegal fees, but gave no notice of dissatisfaction and took no appeal from the decisions of such officers to the Treasury Department, can not recover back such fees by suit. 19 Op. 238.

## VII. Importations Prohibited.

**383.** The importation of foreign-made chromos which have not been copyrighted, but which are copies of a foreign painting that has been copyrighted, is not prohibited by the act of March 3, 1891, amending section 4956, Revised Statutes. 21 Op. 416.

**384.** The prohibitive proviso to the above-named act (26 Stat. 1107) applies only to books, chromos, lithographs, or photographs copyrighted as thereinbefore directed, and can not be held to include chromos or photo-

graphs protected merely by the copyright of the original painting. *Ib.*

### VIII. Violations of Customs Laws.

**385. Smuggling** is the actual passage of dutiable goods through the lines of the custom-house without paying or securing the payment of the duties thereon. 24 Op. 583.

Included also 386, 402-404, 418, 419, 429, 448.

### IX. Fines, Penalties, and Forfeitures.

#### a. *Fines.*

**386. Amount accepted in lieu of forfeiture treated as a fine and not as a duty.**—Where, upon the seizure of smuggled or unentered goods, the Secretary of the Treasury, in the exercise of his power to remit fines and penalties, accepts in lieu of forfeiture the payment of such an amount as he deems just and equitable, the amount paid should be treated as a fine imposed rather than as a duty collected. 24 Op. 583.

#### b. *Penalties—Additional or Penal Duties.*

**387. Additional duty—How levied.**—The additional duty of 20 per cent ad valorem in section 2900, Revised Statutes, can not be legally exacted on costs, charges, and commissions, but should be levied only on the "appraised value" of the merchandise imported, exclusive of such charges. 17 Op. 268.

**388. Same.**—The additional duty of 20 per cent in section 2908, Revised Statutes, is a separate and distinct penalty, which can legally be exacted on the charges as entered, and only on this element of the dutiable value of the merchandise. *Ib.*

**389. Same.**—The legislation on the subject reviewed, and those sections construed. *Ib.*

**390. Opinion of Attorney-General Devens,** of October 4, 1878 (16 Op. 158), that imported merchandise entered upon pro forma invoices, in the absence of regular invoices authenticated by United States consular officers, when advanced in value on appraisement more than 10 per cent, is not liable to the 20 per cent ad valorem additional duty under section 2900, Revised Statutes, concurred in. 18 Op. 259.

**391. Same.**—The words "original invoice" found in section 2900, Revised Statutes, were intended to refer only to the consular invoice. *Ib.*

**392. The additional duty imposed by section 7 of the customs administrative act of June 10, 1890 (26 Stat. 131), is not subject to drawback upon the exportation of the article.** 20 Op. 247.

**393. Same.**—As between the United States and the importer, and in reference to the subject of drawback and debenture, such additional duty must be regarded in the light of a penal duty. *Ib.*

**394. The "additional duties" provided for by section 7 of the customs administrative act of June 10, 1890 (26 Stat. 134), are penalties within the meaning of sections 5292 and 5293, Revised Statutes, and sections 17-20 of the anti-moiety act of June 22, 1874 (18 Op. 189).** 20 Op. 660.

**395. Same—Remission.**—The Secretary of the Treasury may, therefore, remit such additional duties, but has no power to remit any part of the duties strictly so called, however erroneously they may have been assessed. *Ib.*

**396. Penal duties—Special deposits of, with collector.**—The Secretary of the Treasury has no power to permit collectors of customs to receive special deposits of penal duties, to be returned by them to the importers in case the duties should be remitted. All duties paid to the collector must be placed to the credit of the Treasurer of the United States. 21 Op. 345.

**397. Collection of.**—The Treasury Department has no authority, when goods are entered or withdrawn for consumption, to suspend the collection of penal duties accruing thereon pending an application for remission, "the goods in the meanwhile having been delivered from the custody of the Government." 21 Op. 418.

**398. Wool tops, imported in the ordinary condition of scoured wool, are not subject to the penal double duty imposed by the act of March 3, 1883 (22 Stat. 508), on "wool of the sheep, etc., which shall be imported in any other than ordinary condition as now and heretofore practiced," etc.** 18 Op. 534.

#### c. *Forfeitures.*

**399. Forfeitures provided for by section 9 of the customs-administrative act of June 10,**



**1890** (26 Stat. 135), are not confined (except as to the general clause covering every "willful act or omission") to cases in which the United States has been actually deprived of lawful duties. 20 Op. 633.

**400.** Where package claimed not dutiable contains some dutiable merchandise.—Where an importation of packages was entered at the custom-house as containing personal effects only and not subject to duty, but it turned out on examination that the packages contained dutiable merchandise of considerable value: *Held* that the entire packages were not forfeitable but only the dutiable merchandise, the case being governed by section 2802, Revised Statutes, which is unaffected by the provisions of section 12 of the act of June 22, 1874 (18 Stat. 188). 18 Op. 326.

**401.** Importation by mail.—Precious stones and other articles, where the same are liable to customs duty, are prohibited by the Universal Postal Union Convention of June 1, 1878, to be sent through the mail; and if imported by mail they become subject to seizure and forfeiture under section 3061, Revised Statutes. 18 Op. 457.

**402.** Smuggled goods are to be associated with prohibited goods and are not liable to duty. The Government should, therefore, limit its action to forfeiture of the goods and prosecution of the offender. 24 Op. 583.

**403.** Burden of proof.—Former acquittal on charge of smuggling.—The burden imposed by section 9 of the act of December 29, 1897 (30 Stat. 227), and the Treasury regulations made in pursuance thereof, imposing upon the importer the burden of showing the right to entry of any fur-seal skin, rests and remains upon the claimant, and neither an acquittal on the charge of smuggling, nor any other proceeding under the customs-revenue laws, have the effect of shifting the burden of proof in the entirely distinct proceeding to forfeit seal skins brought into the United States in violation of that act. 23 Op. 63.

**404.** Same.—Not a bar to proceedings in rem.—An acquittal upon the charge of smuggling, under section 2865, Revised Statutes, and of illegal importation under section 3082, is not a bar to a proceeding *in rem* to forfeit the goods, the subject of the charge of smuggling and illegal importation, under sections 2802 and 3061, Revised Statutes. *Ib.*

**405.** Same.—Evidence.—To support an indictment under sections 2865 and 3082, Revised Statutes, there must be sufficient evidence of a criminal intent, while a proceeding *in rem* to forfeit, under sections 2802 and 3061, Revised Statutes, presents a civil liability rather than an offense, and does not require proof of such intent. *Ib.*

**406.** Duties in cases of forfeiture.—Regular duties may be exacted on an importation of foreign goods, notwithstanding the goods have been seized and forfeited for a violation of section 9 of the customs-administrative act of June 10, 1890 (26 Stat. 135), and the whole of the proceeds from their sale applied to the use of the United States. 24 Op. 1.

**407.** There is no authority for the practice of the Treasury Department to exact duties, when forfeiture prevails, only in those cases which arise under section 32 of the tariff act of July 24, 1897 (30 Stat. 211, 212), and not in other customs-revenue cases involving forfeiture. 24 Op. 1.

**408.** Release of goods subject to forfeiture.—The Secretary of the Treasury may release cigars imported in violation of section 26 of the act of August 28, 1894 (28 Stat. 552), amending section 2804, Revised Statutes, on payment of a fine equal to the duty, when in his opinion the importation does not involve fraud. 24 Op. 588.

#### d. Seizures.

**409.** A seizure implies an actual caption of the thing seized—open, visible possession, taken and maintained. 17 Op. 83.

**410.** Seizure and destruction of fur-seal skins unlawfully imported.—While collectors of customs and other revenue officers, under the direction of the Secretary of the Treasury, are the proper officers to seize and destroy fur-seal skins imported into the United States in violation of section 9 of the act of December 29, 1897 (30 Stat. 226), yet the usual proceedings for condemnation and forfeiture should be instituted in order to determine whether or not the seizure of such skins was justifiable and their destruction a necessary consequence. 24 Op. 577.

**411.** Same.—Authority of collectors of customs, etc.—The authority of such officers to seize and destroy by summary action rather than under judicial proceedings is reached by implication, as the statute is not explicit upon

that point. Where rights of person and property are involved, an implied authority which is summary and might be used arbitrarily should not be lightly assumed. In such cases the inference should not only be persuasive but irresistible. *Ib.*

**412. Precious stones and other articles,** where the same are liable to customs duty, are prohibited by the postal convention of June, 1878, to be sent through the mail; and if imported by mail they become subject to seizure and forfeiture under section 3061, Revised Statutes. 18 Op. 457.

*e. Appraisement.*

**413. Undervaluation.**—Merchandise seized for violation of section 32 of the act of July 24, 1897 (30 Stat. 151, 211), should be appraised under the provisions of section 13 of the customs administrative act of June 10, 1890 (26 Stat. 131, 136), and not under section 3074, Revised Statutes. 23 Op. 377.

**414. Same—Customs administrative act.**—The customs administration provided by said act of June 10, 1890, is a complete, uniform, and universal system, substituting exclusive remedies for those previously in vogue. *Ib.*

**415. Same.**—The method of appraisement authorized by said section 13 is the exclusive method to be employed on the civil side of customs-revenue administration, and applies to all cases where appraisement is involved, and no question of criminality or fraudulent illegality arises prior to appraisement. *Ib.*

**416. Same.**—The appraisement procedure in undervaluation cases which aims at the levy of additional duties is none the less civil because forfeiture may be insured as a possible ultimate result. *Ib.*

**417. Same.**—Section 3074, Revised Statutes, may properly be held to refer to such provisions as existed when the Revised Statutes took effect. *Ib.*

**418. Appraisement of property subject to forfeiture for smuggling.**—When property subject to forfeiture for smuggling or cognate offenses is seized, the appraisement should be in accordance with section 3074, Rev. Stat., and not under section 13 of the customs administrative act (26 Stat. 136). 24 Op. 583.

*f. Release, Condition of.*

**419. Smuggled or unentered goods.**—The purpose of the law as to smuggled or unentered

goods requires the exaction of the so-called "home value" as the condition of release on payment of the appraised value, but not as implying the assessment of duties on such goods. 24 Op. 583.

**420. Power to release goods illegally imported.**—The Secretary of the Treasury may release cigars imported in violation of section 26 of the act of August 28, 1894 (28 Stat. 552), amending section 2804, Revised Statutes, on payment of a fine equal to the duty, when in his opinion the importation does not involve fraud. 24 Op. 588.

*g. Remission—Compromise.*

**421. Power of the Secretary of the Treasury to remit.**—The Secretary of the Treasury may remit the "additional duties" or penalties, provided for by section 7 of the customs-administrative act of June 10, 1890 (26 Stat. 134), but he has no power to remit any part of the duties, strictly so-called, however erroneously they may have been assessed. 20 Op. 660.

**422. Power of the Secretary to remit penal duties is unavailing where payment is required before delivery of the goods.**—Where payment of the penal duties imposed under section 7 of the act of June 10, 1890, is required as a condition precedent to the delivery of the goods, the power of the Secretary of the Treasury to remit such penalties is unavailing in many cases, but not in the case of warehoused goods, nor where the penalties are first assessed upon final liquidation after the delivery of the goods to the importer. 21 Op. 418.

**423. The Secretary of the Treasury has the power to remit penal duties under Revised Statutes, section 5293, in the case of any invoice under \$1,000,** although it may be part of an entry whose total amount is over \$1,000. 21 Op. 283.

**424. Section 5292, Revised Statutes, in its relation to penal duties, was repealed by the anti-moiety act of June 22, 1874 (18 Stat. 186).** *Ib.*

**425. The Secretary of the Treasury is not authorized to remit penalties incurred under section 7 of the customs-administrative act of June 10, 1890 (26 Stat. 134), amounting to more than \$1,000, until after the proper proceeding before a district judge.** 21 Op. 101.

**426. Same.**—Section 17 of the anti-moiety act of June 22, 1874, supersedes section 5292, Revised Statutes, as to all cases arising under the customs-revenue laws, except those of vessels and merchandise seized or subject to seizure and of less value than \$1,000. *Ib.*

**427. Same.**—Penalties not over \$1,000 in customs-revenue cases may be remitted under section 5293, Revised Statutes, without a proceeding before the district judge. *Ib.*

**428. Same.**—Said limit of \$1,000 refers to the amount of the penalty to be remitted and not to the value of merchandise. *Ib.*

**429. Fines accepted in lieu of forfeiture.**—Where, upon the seizure of smuggled or unentered goods, the Secretary of the Treasury, in the exercise of his power to remit fines and penalties, except in lieu of forfeiture the payment of such an amount as he deems just and equitable, the amount paid should be treated as a fine imposed rather than as a duty collected. 24 Op. 583.

**430. Same.**—The power of the Secretary of the Treasury to release and remit fines, penalties, and forfeitures under sections 3081 and 5293, Revised Statutes, and under sections 17 and 18 of the act of June 22, 1874 (18 Stat. 189), now subject to the restriction of section 7 of the customs administrative act as amended (30 Stat. 212), relates only to civil liability and consequences where the value of the property seized or the amount of the fine or forfeiture incurred does not exceed \$1,000; but does not include penalties "accrued" or "incurred" which have been "adjudged" as part of the punishment under an "indictment." *Ib.*

**431. The Secretary of the Treasury has no power to remit the forfeiture of articles contained in the same package with other articles imported in violation of section 2491, Revised Statutes.** 18 Op. 424.

**432. The Secretary of the Treasury can not remit a penalty imposed on a firm for fraudulent undervaluation by one member of the firm, notwithstanding the fact that it was his purpose to cheat his own firm as well as the United States.** 21 Op. 90.

**433. In proceedings for remission of penalties under sections 17 and 18 of the act of June 22, 1874 (18 Stat. 189), the Secretary of the Treasury may return the findings to the United States commissioner for a further hearing before him upon a claim of newly discovered evidence.** 21 Op. 289.

**434. The Secretary of the Treasury has no right, in case of an application for a remission of penalty under section 17 of the act of June 22, 1874 (18 Stat. 189), to prosecute a further inquiry into the facts after the United States commissioner has reported his findings in the case under section 18 of said act.** 21 Op. 549.

**435. When certain merchandise was seized and libeled under section 32 of the act of July 24, 1897 (30 Stat. 211), and the United States attorney recommended the acceptance of an offer of claimants to compromise under section 3469, Revised Statutes, finding no fraud or irregularity on their part, Held not to be a proper case for compromise under section 3469, Revised Statutes.** 22 Op. 491.

**436. Same.**—A forfeiture can not be remitted, under the above-named section, after it has been adjudged and decreed. *Ib.*

**437. The Treasury Department has jurisdiction of the remission of fines, penalties, and forfeitures imposed by section 2809, Revised Statutes, and of the issuing of instructions relating to the execution of sections 2779 to 2784, Revised Statutes, inclusive.** 25 Op. 535.

**438. Compromise.**—The remedy offered by sections 17 and 18 of the act of June 22, 1874 (18 Stat. 189), to one who is exposed to a fine, penalty, or forfeiture, in the cases provided for in that act is not exclusive, but relief, by way of compromise, may also be extended under section 3469, Revised Statutes. 20 Op. 727.

*See also* TREASURY DEPARTMENT, II, a, 34–58. For Refund, Abatement, Drawback, *see* Customs Law, VI, a, b.

#### *h. Informers' Compensation.*

**439. Informers who are appointed special inspectors without compensation except their interest as informers in the result of seizures are not officers of the United States within section 4 of the anti-moiety act of June 22, 1874 (18 Stat. 186), neither are persons on the weighers' pay roll as temporary laborers but at the time off duty—that is, receiving no pay.** 20 Op. 754.

**440. Treasury officials debarred.**—The anti-moiety act of June 22, 1874 (18 Stat. 186), debars Treasury officials from receiving moiety under section 4233, Revised Statutes. 20 Op. 592.

**441. Canadian customs official.**—The Secretary of the Treasury is authorized under section 4 of the act of June 22, 1874 (18 Stat. 186), notwithstanding the absence of the certificate provided for by section 6 of that act, to award compensation to a Canadian customs official who furnished information which resulted in a forfeiture of certain diamonds for violation of section 3082. Revised Statutes. 24 Op. 61.

**442. A deputy collector of customs,** with headquarters in the customs district of Vermont, but stationed for service at Montreal, Canada, is a "chief officer of customs" within the meaning of section 4 of the above-named act, which authorizes the payment of a reward for original information leading to the discovery of any fraud upon the customs revenue. 24 Op. 61.

**443. Neither inspectors nor general agents** are "chief officers of the customs," within the meaning of section 4 of the anti-moiety act of June 22, 1874 (18 Stat. 186). 20 Op. 675.

**444. The phrase "chief officers of the customs"** refers to the collector or acting collector of each collection district, including the surveyor of any district in which there is no collector, and also to the officer legally in charge of any statutorily recognized port, not being the headquarters of a collection district. *Ib.*

**445. Informers are not entitled to compensation** under section 4 of the anti-moiety act of June 22, 1874 (18 Stat. 186), unless the information is conveyed directly to the chief officer of the customs. Giving information to an inferior officer is not necessarily equivalent thereto. 20 Op. 690.

**446. Same.**—The Secretary of the Treasury can make regulations for the future covering cases where it is desirable that informers should communicate with the collector otherwise than personally. *Ib.*

**447. Where a claimant was both seizer and informer** under the act of June 22, 1874 (18 Stat. 186), in the case of goods forfeited for violation of the customs laws, compensation may be allowed him by the Secretary of the Treasury in either capacity; and the fact that the claimant originally presented his claim as seizer does not estop him from subsequently changing its form and making claim as informer. 18 Op. 69.

#### i. Sale of Goods Seized.

**448. Goods smuggled into the United States** may be seized and sold by a collector of customs although protected by patents. 21 Op. 72.

#### j. Clearance Refused.

**449. For incorrect manifest.**—A collector of customs may lawfully refuse a clearance to a vessel whose master is alleged to be amenable to the penalty provided by section 2809, Revised Statutes, for bringing into the United States merchandise not included in the manifest required and described in the preceding sections. Such refusal is not a seizure, and the act of February 8, 1881 (21 Stat. 322), is inapplicable. 17 Op. 82.

**450. Same.**—A seizure implies an actual caption of the thing seized; open, visible possession taken and maintained. *Ib.*

### X. Board of General Appraisers.

**451. Acceptance of decision as a rule of action.**—While the Treasury Department may accept decisions of the Board of General Appraisers as a rule of action to be followed in the classification of other importations, it is not compelled by law to do so. 20 Op. 648.

**452. Classification decisions—Binding effect of.**—The Secretary of the Treasury and collectors of customs are bound by classification decisions of the Board of General Appraisers, when unappealed from, only so far as such decisions affect the goods immediately before the Board for classification. 25 Op. 81.

**453. Same.**—The Secretary of the Treasury has authority, and it is his duty, to instruct collectors of customs to what extent, if at all, they are to be guided by the conclusions, general doctrines, and expressions contained in any opinion by the Board of General Appraisers, except as regards the merchandise concerning which the decision was made. *Ib.*

**454. Same.**—Where there is conflict between a decision of the circuit court on appeal from the Board of General Appraisers, and a subsequent decision of the Board, the Secretary of the Treasury should give greater consideration to the decision of the court. *Ib.*

**455. The General Appraisers** appointed under the provisions of the act of June 10,

1890 (26 Stat. 131), are officers of the Treasury Department. 21 Op. 85.

**456. Same.**—In case of inefficiency, neglect of duty, or malfeasance in office, it is the duty of the Secretary of the Treasury to investigate the matter for the advice of the President. *Ib.*

**457. The Board of General Appraisers**, in passing upon the reappraisal of certain items of an invoice which had been referred to it for decision under the provisions of section 13 of the act of June 10, 1890 (26 Stat. 136), had no authority to pass upon items which were not embraced in the case submitted, and should have confined itself to those items only which were covered by the importers appeal. 19 Op. 665.

**458. Reappraisal.**—A general appraiser, acting under a collector's direction for the reappraisal, must confine himself to the particular items of the importation on account of which a reappraisal was ordered. Section 13 of the customs administrative act of June 10, 1890 (26 Stat. 137), construed. 20 Op. 39.

**459. The Board of General Appraisers** has jurisdiction under section 14 of the act of June 10, 1890 (26 Stat. 137), to decide whether cartage charges as made by a collector of customs are proper. 21 Op. 262.

**460. Review of collector's decision.**—In an application for an abandonment of dutiable goods under section 23 of the customs administrative act of June 10, 1890, the Board of General Appraisers had jurisdiction to review the collector's decision, which review is final for all purposes, since the importers did not appeal. 21 Op. 402.

**461. Review.**—The action of a collector in denying a reappraisal because the importer refused to answer proper interrogatories propounded to him may be reviewed, first, by the Board of General Appraisers on a protest under section 14 of the act of June 10, 1890 (26 Stat. 137), and next by the circuit court on an application for review under section 15 of that act. 22 Op. 456.

**462. Same.**—The Board of General Appraisers were warranted in refusing to hear and pass upon the question whether the importer was justified in refusing to answer interrogatories under sections 16 and 17 of the above-named act. *Ib.*

**463. The Board of General Appraisers** have no jurisdiction, after the lapse of nearly two years, to reconsider their decision on a protest entered under the customs administrative act of 1890 (26 Stat. 131), on the ground that certain matter contained in the protest was overlooked. It was the duty of the importer to watch for the decision of the board. 21 Op. 144.

**464. A majority of the tea board of the Board of General Appraisers** may properly hear and decide questions presented to it, and their decision is valid and binding, even though the third member of the board should not be present at the hearing. 24 Op. 634.

**465. Incompatible service.**—The provision in section 12 of the customs administrative act of June 10, 1890 (26 Stat. 136), directing that a general appraiser "shall not be engaged in any other business, avocation, or employment," is not applicable to the case of a general appraiser detailed by the Secretary of the Treasury, without additional compensation, as "an expert to represent the United States in the international commission for the conversion of the present Chinese tariff into specific rates." That provision, in connection with other provisions of the law, means that such officer can not hold another office under the Government, or be engaged in other incompatible Government service. 24 Op. 12.

**466. Same—Office.**—There is no incompatibility between the office of general appraiser and the special service of expert for which such officer was detailed, the latter service being a mere employment without compensation, and not an office. *Ib.*

## XI. Suits.

**467. The remedy by suit against a collector**, provided by section 3011, Revised Statutes, is given only to an importer who has paid the duties to the collector whom he proposes to make defendant in the suit; it does not apply to cases in which, by reason of the failure of the importer to pay the collector, the payment is sought to be enforced by suit against the former. 17 Op. 142.

**468. There is no statute giving the Secretary of the Treasury any direct control over**

suits instituted for the collection of unpaid duties. *Ib.*

469. An action for the recovery of duties on goods previously smuggled would be simply an action of assumpsit, not involving any issue of fraud, and therefore not coming under the direction of the Secretary of the Treasury by section 376, Revised Statutes. 20 Op. 714.

470. *Same.*—Such action would be a suit "in which the United States is a party, or interested," within the meaning of section 379, Revised Statutes, and as such the Solicitor of the Treasury has power to instruct district attorneys in regard thereto. *Ib.*

471. Direction of—Frauds upon the revenue.—The Secretary of the Treasury, and not the Attorney-General, should, under the peculiar provisions of section 376, Revised Statutes, direct prosecutions for fraud or attempted fraud upon the revenue. 20 Op. 715.

472. Attachment of goods while in custody of customs officers.—Imported merchandise, while in the custody of the customs officers, is not subject to attachment at the suit of private parties; and those officers should pay no attention to process of that kind against such merchandise when served on them. 19 Op. 101.

473. Certiorari from circuit court of appeals—Considerations warranting.—The question whether or not the writ of certiorari should be applied for in all customs-revenue cases decided by the circuit court of appeals depends upon the extent and value of the importation, the loss to the Government by reason of the adverse decision, the degree of doubt as to the proper construction, the fact that different circuit courts of appeals have reached opposite conclusions upon the same question, and other like considerations. 20 Op. 533.

## XII. Importations for the Government.

474. Bituminous coal, imported for the use of the Government, is dutiable under paragraph 432 of the act of October 1, 1890, chapter 1244 (26 Stat. 600). 20 Op. 314.

## XIII. Reciprocal Commercial Agreements.

475. Neither the argols of Tunisian or Algerian origin imported from Marseille are entitled, as products of France, to the benefit

of the reciprocal commercial arrangement negotiated between France and the United States under section 3 of the tariff act of July 24, 1897 (30 Stat. 203). 22 Op. 477.

ASSAY. *See* CUSTOMS LAW, III, a, 88-90.

ATTACHMENT. *See* CUSTOMS LAW, 472.

BONDS OF AGENT MAKING ENTRY. *See* CUSTOMS LAW, 73-75.

COSTS. *See* CUSTOMS LAW, VI, a, 331.

COVERINGS. *See* CUSTOMS LAW, 210-213, 222-226.

GOODS WHICH ARE IN UNITED STATES WHEN NEW LAW GOES INTO EFFECT. *See* CUSTOMS LAW, 121, 183.

IMPORTATION BY MAIL. *See* CUSTOMS LAW, 401.

LEAKAGE. *See* CUSTOMS LAW, 105.

REFUSAL OF ENTRY. *See* CUSTOMS LAW, 77.

REGULATIONS, CIRCULARS, ETC., OF THE TREASURY DEPARTMENT. *See* TREASURY DEPARTMENT, IV.

RELEASE OF GOODS ILLEGALLY IMPORTED. *See* CUSTOMS LAW, 419, 420.

SMUGGLING. *See* 385, 386, 402-404, 418, 419, 429, 448.

STORAGE CHARGES. *See* CUSTOMS LAW, 58.

## DAIRY AND FOOD PRODUCTS.

*See* FOOD PRODUCT.

## DAMAGES.

1. There is no ground to support the claim for indemnity of the British Eastern Extension Australasia and China Telegraph Company for cutting the cable at Manila during the war with Spain. 22 Op. 315.

2. There is no objection to the submission to Congress of the claim of the British Cuba Submarine Telegraph Company for damages by our vessels occurring during the hostilities with Spain. 22 Op. 654.

3. Unless authorized by Congress the head of a Department has no power to adjust and pay claims for unliquidated damages, even when arising from the breach of a contract, except where such claims are for work and labor done or materials furnished under a contract silent as to the price and the amount thereof unliquidated. 22 Op. 437.

*See also* CLAIMS, III; contracts, V.

**DAMS.**

*See* NAVIGABLE WATERS, III, b.

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**DANGEROUS CONTAGIOUS DISEASES.**

*See* IMMIGRATION, 47.

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**DATE.**

The date is no part of the substance of a sealed instrument, and need not necessarily be inserted. The real date is the time of its delivery, which may always be proved. 21 Op. 469.

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**DEAF AND DUMB INSTITUTION.**

*See* DISTRICT OF COLUMBIA, IV.

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**DECLARATIONS.**

*See* CUSTOMS LAWS, III, a; PENSIONS, I, b.

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**DEDUCTIONS.**

FROM PAY OF MAIL CONTRACTORS. *See* POSTAL SERVICE, III, c.

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**DEEDS.**

*See* STATE TAX.

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**DEFINITIONS.**

*See* WORDS AND PHRASES.

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**DELAWARE INDIAN CLAIMS.**

*See* INDIANS, V, 137-139.

**DELEGATION.**

OF LEGISLATIVE POWER OR FUNCTION. *See* EXECUTIVE DEPARTMENTS, 54; NAVIGABLE WATERS, 19, 145, 157; DEPARTMENT OF AGRICULTURE, 33.

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**DELIVERY.**

OF MAIL. *See* POSTAL SERVICE, III, d.  
TO IMPORTER. *See* CUSTOMS LAWS, III, e.

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**DEPARTMENT OF AGRICULTURE.****I. In General, 1-2.****II. Officers.**

- a. *Secretary of Agriculture*, 3-14.
- b. *Ass't Secretary of Agriculture*, 15.
- c. *Chiefs of Divisions*, 16.

**III. Bureaus, Divisions.**

- a. *Animal Industry*, 17.
- b. *Weather Bureau*, 18-23.

**IV. Clerks, Employees, etc., 24-30.****V. Regulations, 31-34.****VI. Publications, Printing, 35-38.****VII. Seed Distribution, 39-48.****VIII. Meat, Cattle Inspection, etc., 49-61.****IX. Food and Dairy Products, 62.****I. In General.**

1. **An Executive Department.**—The term "Executive Departments" in the Federal statutes refers only to those Departments specified in section 158, Revised Statutes, to which has since been added the Department of Agriculture. 22 Op. 62.

2. **An appropriation** to enable the Secretary of Agriculture to prepare certain property for an experiment station and to remove a previous experiment station to a new site, is a "permanent specific appropriation" within the meaning of section 5 of the act of June 20, 1874 (18 Stat. 110). 20 Op. 599.

IMPORTATIONS OF HAY AND STRAW. *See* 33.

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**II. Officers.**

- a. *Secretary of the Treasury*.

3. **Detail of officer to Civil Service Commission.**—The Secretary of Agriculture can legally

detail any such officers or employees from his Department as may be requested by the Civil Service Commission, but he can not assign an officer of the Army detailed for service in the Weather Bureau to any other duties than those for which he is by law authorized to be detailed in the Weather Bureau. 20 Op. 750.

4. The Secretary of Agriculture may detail a person now in the classified service of his Department to duty elsewhere within the classified service of his Department provided his compensation be not increased. 20 Op. 573.

5. Promotion of employees.—He may promote from class 1 to class 3 and from class 2 to class 4, without regard to intermediate steps. *Ib.*

6. It is not necessary for the Secretary of Agriculture to give a notice of furlough without pay of assistant microscopists over his official signature in each individual case when their services are not required. 21 Op. 318.

7. Same.—A general order, signed by him, directing inspectors in charge of assistant microscopists to furlough them without pay when their services are not required will be sufficient. *Ib.*

8. Traveling expenses of agents.—The Secretary of Agriculture probably has the power to compensate agents employed for the Department, by stated salaries which shall be in full for all traveling expenses as well as for services, but the matter is one of considerable doubt and uncertainty. 20 Op. 601.

9. The Secretary of Agriculture has authority to procure and furnish to the Public Printer, the illustrations, engravings, maps, and charts to accompany the bulletins and special reports prepared in his Department. 20 Op. 41.

10. Seeds.—Joint resolution No. 27 of March 3, 1896 (29 Stat. 467), authorizes and directs the Secretary of Agriculture to purchase and distribute seeds for the year 1896 in accordance with the practice followed by the Department prior to the year 1895. 21 Op. 321.

11. Same.—If the practice has been varied from year to year, the Secretary is to exercise his discretion, but it will be a discretion of choice and not a discretion to do or leave undone. *Ib.*

12. Same.—The last part of the resolution authorizes and directs the purchase of seeds for the year 1896 in open market at the dis-

cretion of the Secretary, without resorting to advertisement for bids. *Ib.*

13. Importation of meats from Germany.—The Secretary of Agriculture is not authorized under the act of March 3, 1903 (32 Stat. 1157), to request the Secretary of the Treasury to refuse admission into the United States of certain meats and meat preparations coming from Germany, because of the action of the German Government in prohibiting the importation of similar goods into that country. 25 Op. 62.

14. Commissioner of Agriculture.—The provisions in the act of May 29, 1884 (23 Stat. 31), giving the Commissioner of Agriculture power to expend money in such disinfection and quarantine measures as may be necessary to prevent the spread of pleuro-pneumonia from one State or Territory into another, does not authorize him to purchase animals infected with that disease for the purpose of slaughter, 18 Op. 154.

AUTHORITY TO EMPLOY COUNSEL. See 17.  
PERMIT FOR USE AND OCCUPANCY OF ALEXANDER ARCHIPELAGO FOREST RESERVE.  
See ALASKA.

#### b. Assistant Secretary of Agriculture.

15. The Assistant Secretary of Agriculture is not a clerk or employee within the meaning of the statute; as to the chiefs of divisions, *quære*. 20 Op. 728.

#### c. Chiefs of Divisions.

16. Chiefs of division in the Department of Agriculture are subject to all the regulations in accordance with law which may be prescribed by the head of the Department. 20 Op. 703.

See also 22.

### III. Bureaus.

#### a. Animal Industry.

17. Employment of counsel.—The provision in the act of July 18, 1888 (25 Stat. 333), making an appropriation "for carrying out the provisions of the act of May 29, 1884 (23 Stat. 31), establishing the Bureau of Animal Industry," does not authorize the Commissioner of Agriculture to employ counsel



for the defense of employees of the Bureau for acts done by them in carrying out such provisions under its direction. Employment of counsel in such cases is governed by sections 189, 362, and 363, Revised Statutes. 19 Op. 328.

ORDER No. 124. See 33.

*b. Weather Bureau.*

**18. Transfer from War Department.**—The Secretary of Agriculture is authorized by the act of October 1, 1890 (26 Stat. 653), transferring the weather service from the War Department to the Department of Agriculture, and by the agricultural appropriation act of March 3, 1891 (26 Stat. 1044), to reduce the compensation of any of the persons thus transferred so as to conform to the grading within the classified civil service. 20 Op. 395.

**19. Same—Appointment—Promotion.**—He may appoint any person transferred to one of the \$1,500 places specified in the act of 1891, and may promote to the vacancy thus created any other person of the transferred class, although the salary of the person promoted becomes increased thereby. *Ib.*

**20. Same.**—The provisions of section 5 of the act of 1890 (26 Stat. 653), continuing the compensation of the persons transferred as it should be June 30, 1891, was intended as a protection, rather than as a bar to their promotion. *Ib.*

**21. The employees of the Weather Bureau of the Department of Agriculture, on duty away from and outside of the city of Washington,** are not members of the classified civil service. 20 Op. 345.

**22. A vacancy in the office of Chief of the Weather Bureau can only be filled in the mode provided by section 4 of the act of October 1, 1890 (26 Stat. 653), to wit, by appointment by the President or by detailing the Chief Signal Officer of the Army.** 21 Op. 189.

**23. Any publication in an official circular by the Weather Bureau of the ground upon which an employee of the Government has been suspended or discharged from the public service will not support a cause of action for libel against the chief of that Bureau for making such publication, provided it was made in good faith, without malice, in the performance of official duty, and with the design only of promoting the public interests.** 21 Op. 320.

**IV. Clerks, Employees, etc.**

**24. Promotion.**—In the Department of Agriculture it is permissible to promote from class 1 to class 3 and from class 2 to class 4 without regard to intermediate steps. 20 Op. 573.

**25. Detail.**—The Secretary of Agriculture may detail a person in the classified service of his Department to duty elsewhere within the classified service of his Department provided his compensation be not increased. *Ib.*

**26. All appointments and removals of messengers and laborers in the Department of Agriculture must be made by the Secretary or Acting Secretary.** 21 Op. 355.

**27. Hours of labor—Leave of absence.**—The provisions of section 5 of the act of March 3, 1893 (27 Stat. 715), relating to the hours of service annually and sick leave of Department clerks, are applicable to the Department of Agriculture. 20 Op. 728.

**28. Same.**—The nature of the evidence required from applicants for leave and sufficiency of reasons for extending or limiting hours of labor are matters within the discretion of the Secretary as to which the Attorney-General can not advise. *Ib.*

**29. Same.**—An employee not connected with the Department during the entire calendar year is not entitled to full annual or sick leave, which should be prorated. *Ib.*

**30. Agents—Compensation for traveling expenses.**—The Secretary of Agriculture probably has the power to compensate agents employed for the Department, by stated salaries which shall be in full for all traveling expenses as well as for services, but the matter is one of considerable doubt and uncertainty. 20 Op. 601.

**V. Regulations.**

**31. Chiefs of division in the Department of Agriculture are subject to all the regulations in accordance with law which may be prescribed by the head of the Department.** 20 Op. 703.

**32. Opinion of Attorney-General.**—While certain regulations posted in the Department of Agriculture seem to be valid, yet until the lawfulness of some particular regulation is actually called in question no opinion respecting its legality can properly be asked for or given. *Ib.*

33. The order of the Department of Agriculture of April 26, 1904 (Bureau of Animal Industry Order No. 124), prohibiting the importation of hay and straw from continental Europe as a means of preventing the introduction of foot-and-mouth disease among cattle in the United States, is a regulation of commerce with foreign nations and an exercise of legislative power, and therefore void. 25 Op. 249.

34. Same.—The act of February 2, 1903 (32 Stat. 791), merely authorizes the Secretary of Agriculture to make such regulations and take such measures as are administrative in their nature for the enforcement of the purposes of that law. *Ib.*

MEAT INSPECTION. See VIII.

#### VI. Publications, Printing.

35. The expense of printing and binding such Animal Industry Reports as the Secretary of Agriculture is authorized to publish, may, under his direction, be paid out of the \$850,000 appropriation approved July 5, 1892 (27 Stat. 79), for the use of the Bureau of Animal Industry. 20 Op. 573.

36. Same.—Such expense should not be paid out of the \$75,000 appropriated and placed in the hands of the Public Printer for use in the Department of Agriculture. *Ib.*

37. The Secretary of Agriculture has authority to procure and furnish to the Public Printer, the illustrations, engravings, maps, and charts to accompany the bulletins and special reports prepared in his Department. 20 Op. 41.

38. Bulletins.—Section 89 of the act of January 12, 1895 (28 Stat. 622), limits the number of pages of the bulletins of the Department of Agriculture to 100, and the maximum size of the pages to octavo. 22 Op. 265.

#### VII. Seed Distribution.

39. The act making appropriations for the purchase of seeds for the Department of Agriculture for the fiscal year 1895 does not authorize the purchase of any others than those described in section 527, Revised Statutes. 21 Op. 55.

40. The seeds purchasable out of the appropriation made in the act approved March 2,

1895 (28 Stat. 733), for the purchase, propagation, and distribution, as required by law, of valuable seeds, bulbs, trees, shrubs, vines, cuttings, etc., are limited to those described in section 527, Revised Statutes, and must be such as are adapted to general cultivation and to promote the general interests of horticulture and agriculture throughout the United States. 21 Op. 162.

41. The Secretary of Agriculture is authorized to make the purchases of seeds referred to conformably to section 3709 of the Revised Statutes, reserving the right to reject any and all bids. *Ib.*

42. Joint resolution No. 27 of March 3, 1896 (29 Stat. 467), authorizes and directs the Secretary of Agriculture to purchase and distribute seeds for the year 1896 in accordance with the practice followed by the Department prior to the year 1896. 21 Op. 321.

43. Same.—If the practice has been varied from year to year, the Secretary is to exercise his discretion, but it will be a discretion of choice and not a discretion to do or leave undone. *Ib.*

44. Same.—The last part of the resolution authorizes and directs the purchase of seeds for the year 1896 in open market at the discretion of the Secretary, without resorting to advertisement for bids. *Ib.*

45. The act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1897 (29 Stat. 99, 106), authorizes the Department to pay \$130,000 for seed already put up in packages and labeled, ready for distribution. 21 Op. 372.

46. Adulterated or misbranded seeds.—Publication of names of vendors.—The provision in the act of Congress of March 3, 1905 (33 Stat. 869), directing the Secretary of Agriculture to obtain in the open market seeds of grass, clover, or alfalfa, test the same, and if found to be adulterated or misbranded to publish the result of the tests, with the names of the persons by whom the seeds were offered for sale, is a valid law. 25 Op. 553.

47. Same.—That provision can not properly be regarded as an attempt to regulate the sale, shipment, and transportation of seeds; it provides merely for the dissemination of information regarding seeds. *Ib.*

48. Same.—The fact that the effect of the publication of the information may be to lessen the sale of misbranded or adulterated

seed is not sufficient to transform a measure intended for the education of the public into a regulation of commerce or police. *Ib.*

### VIII. Meat, Cattle, and Hay Inspection, etc.

**49. Regulation requiring classification of meats.**—The act of March 2, 1895, section 2 (28 Stat. 732), does not authorize the making of a regulation by the Secretary of Agriculture requiring that meats other than beef products shall be so marked as to show the species of animal from which it was produced, classifying all unmarked packages of meats as uninspected beef, and refusing clearance to vessels having on board such unmarked packages. 21 Op. 229.

**50. Regulations to prevent transportation, etc., of condemned carcasses of cattle, etc.**—The provisions of the act of March 2, 1895 (28 Stat. 727, 732), authorizing the Secretary of Agriculture to make such rules and regulations as he may deem necessary to prevent the transportation, etc., of condemned carcasses or parts of carcasses of cattle, sheep, and swine, which have been inspected in accordance with the provisions of the act, imposes the duty to make such rules and regulations. 21 Op. 168.

**51. Same.**—A regulation requiring that inspected articles found to be diseased and unfit for human food shall be at once removed and rendered in such manner as to prevent its withdrawal as a food product, under the supervision of employees of the Department of Agriculture, is not authorized by the grant of power to make regulations to prevent transportation. *Ib.*

**52. Same.**—The Secretary of Agriculture is not required to effect the prevention of the consumption of diseased meat as human food within the State of its origin and without its having been carried out and brought back into such State; nor, if the Secretary decides that pork affected with trichinæ is unfit for human food, does the law provide for or authorize its destruction as food or grant authority to license its use under limitations or restrictions. *Ib.*

**53. A criminal prosecution will not lie for falsely representing in a label placed on canned meat that the meat contained in the can has been**

**inspected in accordance with the act of March 3, 1891 (26 Stat. 414).** 21 Op. 128.

**54. Seizure and slaughter of sheep adjudged to be diseased, or to have been exposed to disease.**—The authority of the Department of Agriculture, under section 8 of the act of August 30, 1890 (26 Stat. 416), to seize and slaughter sheep adjudged to be diseased or to have been exposed to disease, and erroneously believed to have been imported in violation of that law, without compensation by the Government, is doubtful. 21 Op. 460.

**55. Same—Duty of Secretary.**—The Secretary is to adopt and enforce regulations for adjudging whether or not the animals are diseased, or have been exposed to disease so as to be dangerous, and, without having regard to possible claims, to resort to slaughtering if, in his judgment, such a measure is required to prevent the spread of the disease among animals in this country. *Ib.*

**56. Same.**—Congress intended by the above act that exposed animals, as well as those actually infected, imported in violation of that act, should be slaughtered indiscriminately without regard to the question of the legality of the importation. *Ib.*

**57. Same—Compensation.**—The Secretary of Agriculture may cause to be slaughtered such sheep as are adjudged to be infected with a contagious disease or exposed to such infection, and, in making the compensation provided by section 8 of the act of August 30, 1880 (26 Stat. 414), he is limited to those which were exposed to infection but in which the existence of the disease was not manifest. 22 Op. 390.

**58. Same.**—The language of section 8 of this act authorizing the slaughter of infected animals, is in terms merely permissive and not mandatory. The power conferred is to be exercised or not, and when, and to what extent, according to the discretion of the Secretary of Agriculture, which should be exercised with due regard to its necessity upon the one hand, and for the rights of private property upon the other. *Ib.*

**59. Importations of meat from Germany.**—The Secretary of Agriculture is not authorized under the act of March 3, 1903 (32 Stat. 1157), to request the Secretary of the Treasury to refuse admission into the United States of certain meats and meat preparations coming from Germany, because of the action

of the German Government in prohibiting the importation of similar goods into that country. 25 Op. 62.

60. The order of the Department of Agriculture of April 26, 1904 (Bureau of Animal Industry Order No. 124), prohibiting the importation of hay and straw from continental Europe as a means of preventing the introduction of foot-and-mouth disease among cattle in the United States, is a regulation of commerce with foreign nations and an exercise of legislative power, and therefore void. 25 Op. 249.

61. The act of February 2, 1903 (32 Stat. 791), merely authorizes the Secretary of Agriculture to make such regulations and take such measures as are administrative in their nature for the enforcement of the purposes of that law. *Ib.*

#### IX. Dairy and Food Products.

62. False labeling or branding.—The Department of Agriculture and the Treasury Department have no jurisdiction or power under the act of March 3, 1903 (32 Stat. 1157), to prevent or punish the false labeling or branding of dairy or food products after they have passed the custom-house and are delivered to the owner or consignee. 24 Op. 675.

*See also* FOOD PRODUCTS.

ASSISTANT MICROSCOPISTS. *See*, 6, 7.

#### DEPARTMENT OF COMMERCE AND LABOR.

I. In General, 1-7.

II. Officers, 8-23.

III. Bureaus, 24-34.

##### I. In General.

1. Transfer of land to Department of Commerce and Labor for light-house reservation purposes.—The Secretary of the Navy has authority to transfer control of certain land at San Juan, P. R., reserved by Executive order for naval purposes, to the Department of Commerce and Labor, for the extension of the light-house reservation at that place. 25 Op. 269.

2. Anchorage and anchorage grounds.—Matters arising under the acts of May 16, 1888 (25 Stat. 151), February 6, 1893 (27 Stat. 431), March 6, 1896 (29 Stat. 54), and June 6, 1900 (31 Stat. 682), relating to anchorage and anchorage grounds, have been transferred by the act of February 14, 1903 (32 Stat. 825), from the Treasury Department to the Department of Commerce and Labor. 25 Op. 37.

3. Regulations governing steamboats, etc., at yacht races.—The making of rules and regulations under the act of May 19, 1896 (29 Stat. 122), to insure the safety of passengers on excursion steamers, etc., at regattas or yacht races, and their subsequent enforcement by revenue cutters, is "business within the jurisdiction" of the Department of Commerce and Labor; and when revenue vessels are detailed for that purpose, they are subject to the direction and control of the Secretary of that Department in all matters relating to such business. 25 Op. 27.

4. Revenue-Cutter Service—Department of Commerce and Labor—Seal protection.—The act of February 14, 1903 (32 Stat. 825), giving the Department of Commerce and Labor jurisdiction and control of the seal fisheries, does not transfer to that Department the Revenue-Cutter Service or any of its vessels or officers, and the Secretary of the Treasury is not authorized by said act, or otherwise, to assign revenue vessels to the duty of seal protection. 25 Op. 4.

5. Same.—Vessels assigned by authority of the President to the protection of the seal fisheries will henceforth, while so assigned, be subject to the direction of the Secretary of Commerce and Labor in respect to those duties, but their internal government and duties concerning the revenue while thus engaged will be under the Secretary of the Treasury. *Ib.*

6. Same.—Appropriations for the Revenue-Cutter Service will continue to be expended by the Secretary of the Treasury, except such portions, if any, as may be applied to extraordinary business concerning seal protection, which latter will be under the control of the Secretary of Commerce and Labor. *Ib.*

7. The general line of cleavage between the Department of Commerce and Labor and the Treasury Department, as established by the act creating the former Department, leaves

"navigation" with the former, and little with the Treasury Department which does not concern the collection, keeping, minting, and disbursing of the public treasure. 25 Op. 29, 152.

## II. Officers.

### *Secretary of Commerce and Labor.*

**8. Seal for Census Office.**—The Secretary of Commerce and Labor is authorized, under the act of February 14, 1903 (32 Stat. 825), which places the Census Office under his jurisdiction, to require the Director of the Census to provide a seal for that office, as directed by section 31 of the act of March 3, 1899 (30 Stat. 1021), and to give it a device in accordance with his (the Secretary's) views. 25 Op. 1.

**9. Same.**—There is nothing in the nature of this duty that is judicial or quasi-judicial, or of such a character that its performance should not be subject to the direction of the head of the Department. *Ib.*

**10. Correspondence with collectors of customs.**—The Secretary of Commerce and Labor is not required, in the execution of the duties imposed upon him by the act of February 14, 1903 (32 Stat. 825), to correspond with collectors of customs through the Secretary of the Treasury. 25 Op. 3.

**11. Boarding of vessels.**—The execution of the act of March 31, 1900 (31 Stat. 58), entitled "An act concerning the boarding of vessels," has been transferred by section 10 of the act of February 14, 1903 (32 Stat. 825), from the Secretary of the Treasury to the Secretary of Commerce and Labor. 25 Op. 51.

**12. Certificates of registry of vessels.**—The duty imposed upon the Secretary of the Treasury by section 4158, Revised Statutes, of transmitting to collectors of customs blank forms of certificates of registry of vessels, was, by the act of February 14, 1903 (32 Stat. 825), transferred to the Secretary of Commerce and Labor. 25 Op. 49.

**13. Same—Expense—Comptroller of the Treasury.**—The question as to whether the expense of preparing such blank forms and furnishing them to collectors can be paid out of the appropriation for defraying the expenses for collecting the revenue from customs, is peculiarly one for the Comptroller of the Treasury to decide (23 Op. 468). *Ib.*

**14. Regulation of steam vessels.**—The Secretary of Commerce and Labor is not authorized by section 4462, Revised Statutes, to amend, modify, or repeal existing regulations, or to adopt new regulations for the enforcement of the provisions of Title 52, Revised Statutes, entitled "Regulation of Steam Vessels," without prior action thereon by the Board of Supervising Inspectors. The Secretary has, therefore, no authority whatever in the matter, except as conferred by section 4405, Revised Statutes. 25 Op. 67.

**15. Same.**—Called meetings of the Board of Supervising Inspectors may be held at places other than Washington, within the judgment of the Secretary of Commerce and Labor, section 4405 specifying merely the place where the annual meeting of the Board shall be held. *Ib.*

**16. Designation of river and harbor lines.**—The power and authority to designate lines dividing the high seas from rivers, harbors, and inland waters, conferred upon the Secretary of the Treasury by section 2 of the act of February 19, 1895 (28 Stat. 672), was, by section 10 of the act of February 14, 1903 (32 Stat. 829), transferred to the Secretary of Commerce and Labor. 25 Op. 149.

**17. Penalties.**—The Secretary of Commerce and Labor has no authority to direct the discontinuance of a suit for the recovery of a fine or penalty imposed for a violation of the New York Harbor act of June 29, 1888 (25 Stat. 209), nor did the Secretary of the Treasury have such power prior to the taking effect of the act of February 14, 1903 (32 Stat. 825), creating the Department of Commerce and Labor. 25 Op. 220.

**18. The word "vessels,"** as used in the New York Harbor act (25 Stat. 209), does not relate to vessels in the sense contemplated by sections 5292-5294, Revised Statutes, authorizing the remission of fines, penalties, and forfeitures by the Secretary of the Treasury. *Ib.*

**19. Remission of penalty—Improper manifest.**—The Secretary of Commerce and Labor has no authority to remit or to reduce a fine or penalty imposed under section 15 of the act of March 3, 1903 (32 Stat. 1217), for failure to comply with sections 12-14 of that act in regard to the manifests or lists of alien passengers required to be furnished by masters of vessels arriving within the United

States, such power not having been specifically conferred by Congress. 25 Op. 336.

**20. Lease of St. Paul and St. George Islands—Authority.**—The act of February 14, 1903 (32 Stat. 829), transferred to the Secretary of Commerce and Labor the same authority over the islands of St. Paul and St. George, Alaska, that was theretofore possessed by the Secretary of the Treasury, and he may therefore lease those islands to the North American Commercial Company for the propagation of blue foxes. 25 Op. 497.

**21. Same.**—The Secretary of Commerce and Labor has authority to lease, for the purpose of propagating foxes, such other islands in the waters of Alaska as had been so leased by the Secretary of the Treasury prior to May 14, 1898. *Ib.*

**22. Same.**—The Secretary of Commerce and Labor has no authority to regulate the killing of fur-bearing animals in Alaska, other than fur-bearing seals. *Ib.*

**23.** The Secretary of Commerce and Labor has authority to sell a windmill formerly used for pumping water at the oyster cove, Lynnhaven, Va., but which is no longer needed or used for that purpose. 25 Op. 567.

LIGHT-HOUSE AT DIAMOND SHOAL. *See* LIGHT-HOUSES 7.

### III. Bureaus.

**24. Naming the bureaus.**—The Secretary of Commerce and Labor is authorized, under the act of February 14, 1903 (32 Stat. 825), creating the Department of Commerce and Labor, to change the names of the Department of Labor, the Fish Commission, and other offices thereto assigned, as the business and good government of his Department requires. 24 Op. 697.

**25. Printing of special bureau reports—Beef industry report.**—Section 89 of the act of January 12, 1895 (28 Stat. 622), authorizes the printing of 2,500 copies of special as well as annual reports of Department bureau chiefs, when such printing is directed by the head of a Department. 25 Op. 377.

**26. Employment of honorably discharged soldiers.**—The preference given honorably discharged soldiers of the United States by section 5 of the act of March 6, 1902 (32 Stat. 51), in the matter of employment in the per-

manent Census Office is not absolute and regardless of qualifications. Such preference is to be given if the person is equally qualified; but the appointing power still retains and must exercise its discretion and judgment in determining the fitness for the required work of the persons to be selected and retained. 24 Op. 64.

**27. Same—Standard of fitness.**—To this end the Director of the Census may fix a reasonable standard of fitness, and guard it by reasonable regulations intended and calculated to secure an efficient permanent force. Such regulations may relate to age, experience, rating, proposed time of service, etc. *Ib.*

**28. Same.**—The preference given by the statute is one with respect to the place sought or held; but if a person of the preferred class fails to secure the place he seeks, or to retain the one he has, there is no obligation on the appointing power to create a vacancy by dismissing an efficient employee to give him another chance. *Ib.*

*See also* CIVIL SERVICE, V.

**29. Special agents.**—The Director of the Census is authorized, under section 7 of the act of March 6, 1902 (32 Stat. 51), to employ special agents temporarily in the Census Office at Washington upon special work not clerical in its nature. 24 Op. 78.

**30. Same.**—The words "all employees of the Census Office" in section 5 of the above-named act can not be held to apply to special agents or other field employees who may be temporarily assigned to service in the Census Office. *Ib.*

**31. Appropriation act of March 3, 1903 (32 Stat. 1059).**—The unexpended balance of the census appropriation referred to by the proviso in the act of March 3, 1903 (32 Stat. 1059), is available for census purposes, notwithstanding the specific appropriations made therefor by the act of February 25, 1903 (32 Stat. 896). 24 Op. 699.

**32.** The Census Office is an integral part of the Department of Commerce and Labor, and as such is subject to the direction of the Secretary of that Department. 25 Op. 11.

Various objections thereto considered. *Ib.*

**33. Seal for Census Office.**—The Secretary of Commerce and Labor is authorized, under the act of February 14, 1903 (32 Stat. 825), which places the Census Office under his jurisdiction, to require the Director of the Census

to provide a seal for that office, as directed by section 31 of the act of March 3, 1899 (30 Stat. 1021), and to give it a device in accordance with his (the Secretary's) views. 25 Op. 1.

34. The special agents of the Census Office appointed to collect the statistics referred to in sections 7, 8, and 9 of the act of March 6, 1902 (32 Stat. 52), "to provide for a permanent Census Office," are required, under section 18 of the act of March 3, 1899 (30 Stat. 1019), to take an oath or affirmation before entering upon the discharge of their duties. 25 Op. 228.

## DEPARTMENT OF THE INTERIOR.

### I. In General, 1-3.

#### II. Officers.

- a. *Secretary of the Interior*, 4-19.
- b. *Assistant Secretary*, 20-22.
- c. *Commissioner of Indian Affairs*, 23-25.

#### III. Bureaus or Offices.

- a. *Patent Office*, 26-29.
- b. *Pension Office*, 30-36.
- c. *General Land Office*, 37-38.
- d. *Indian Office*, 39.
- e. *Census Office*, 40-45.
- f. *Geological Survey*, 46-47.

### I. In General.

1. **Jurisdiction—Pension laws.**—The Commissioner of Pensions and Department of the Interior have sole jurisdiction to administer and construe the pension laws. 20 Op. 178.

2. **The Columbia Institution for the Deaf and Dumb** is in the Department of the Interior, in the sense that its expenditures of public money are under the head of that Department, and subject to the provisions of section 3709, Revised Statutes, in the matter of making purchases and contracts for supplies or services. 22 Op. 1.

3. By section 2 of the act of March 3, 1899 (30 Stat. 1014), the Census Bureau is made a part of the Interior Department, and as such its accounts are subject to such rules and regulations as the Secretary may prescribe, pursuant to section 22 of the act of 1894 (28 Stat. 211). 22 Op. 414.

### II. Officers.

#### a. *Secretary of the Interior.*

4. **Census appointees—Plan for taking the census—Contracts for supplies, etc.**—The Secretary of the Interior is not required to approve the selection of appointees, the plan of the Director of the Census for taking the census, or of making contracts for supplies, etc. 22 Op. 414.

5. **The expenditures incurred by the Director of the Census**, within the limits authorized by the act of 1899 (30 Stat. 1014), are proper and lawful, and the Secretary of the Interior should approve them, if it is his duty to do so at all, as a ministerial act, and not as one in which he is to exercise judgment or discretion touching the wisdom or advisability of the expenditure. Ib.

6. **Power to review decision of Commissioner of Patents in interference case.**—The Secretary of the Interior has the authority under section 441, Revised Statutes (see also sec. 481, Rev. Stats.), to review a decision of the Commissioner of Patents made in an interference case under Rule 110, Rules and Practice of the Patent Office, upon a motion to amend a preliminary statement. 17 Op. 205.

7. **Purchases from contingent fund.**—Opinion of July 16, 1886 (18 Op. 424), in regard to the power conferred upon heads of Departments by section 3683, Revised Statutes, respecting purchases payable from the contingent fund, does not apply to the Assistant Secretary of the Interior while in the exercise of authority prescribed for him by the Secretary of the Interior under section 439, Revised Statutes. 18 Op. 432.

8. **Forest reservations—Control and occupancy.**—Congress has the right to place the control of the occupancy and use of forest reservations in the hands of the Secretary of the Interior for their preservation, and to provide that any occupancy or use in violation of the rules and regulations adopted by him shall be punishable criminally. 22 Op. 266.

9. **Forest reserves, prohibition of hunting upon.**—The Secretary of the Interior can not, without express authority of law, prescribe rules and regulations by which the national forest reserves may be made refuges for game, or by which the hunting, killing, or capture

of game thereon may be forbidden. 23 Op. 589.

10. **Same.**—Neither the act of June 4, 1897 (30 Stat. 11, 34), nor the act of March 3, 1899 (30 Stat. 1095), nor any other provision of law confers upon the Secretary of the Interior this power. *Ib.*

11. **Freedmen's Hospital and Asylum.**—The relations of the Secretary of the Interior and the Freedmen's Hospital and Asylum are unchanged by the act of March 3, 1893 (27 Stat. 537), save that the Commissioners of the District of Columbia are given the supervision and control of expenditures for the Freedmen's Hospital and Asylum. 20 Op. 652.

12. **Freedmen's Hospital—Water main.**—The Secretary of the Interior has authority to prevent the Commissioners of the District of Columbia from laying a water main across the land upon which the Freedmen's Hospital is to be erected. 25 Op. 515.

13. **Same.**—The permission granted the Commissioners of the District of Columbia by the Chief of Engineers in charge of the public buildings and grounds in the District to lay a water main across the land upon which the Freedmen's Hospital is to be erected was a mere license, without consideration, and, being still executory, is revocable at will. *Ib.*

14. **Rio Grande River—Damming.**—The Secretary of the Interior has no power, under the provisions of the act of March 3, 1891 (26 Stat. 1101), to authorize the damming of the Rio Grande River for irrigation purposes. 21 Op. 518.

15. **Resurvey of private land claim.**—An appeal does not lie to the President to set aside a decision made by the Secretary of the Interior touching the correctness or validity of a resurvey of a private land claim. 18 Op. 31.

16. **Railroad land grants—Application of case of *Sjoli v. Dreschel* (199 U. S. 564).**—The Secretary of the Interior, in the administration of the several land grants to railroads, is not bound to follow the broad principles quoted in the decision of the Supreme Court in the case of *Sjoli v. Dreschel* (199 U. S. 564), but may confine what is said therein to a state of facts similar to those then before the court. 25 Op. 632.

17. **Same.**—No title passes to *lieu* lands before approval by the Secretary of the Interior,

of the company's list of selections; and, when so approved, the lands are to be considered as fully selected as of the date of the listing, so as to give to the company superiority over the right of homestead or preemption claimants settling after the listing by the company. *Ib.*

18. **The stretching of wires without authority across the Iowa reservation in the District of Columbia** is governed by section 1818, Revised Statutes, and should be brought to the attention of the Secretary of the Interior. 21 Op. 224.

19. **Payment of Indian depredation judgments.**—All authority and discretion in regard to the approval or disapproval of the payment of Indian depredation judgments from annuities and property of Indians or from appropriations on their account are vested in the Secretary of the Interior. 21 Op. 131.

AUTHORITY AND DUTIES IN REGARD TO INDIANS. *See* INDIANS, under appropriate headings.

CHARITABLE INSTITUTIONS IN THE DISTRICT OF COLUMBIA. *See* DISTRICT OF COLUMBIA, V. ANNULMENT OF ACTION APPROVING LOCATION OF RAILROAD THROUGH PUBLIC LANDS. *See* RAILROADS, 9.

APPROVAL OF ELLIS CONTRACT. *See* INDIANS, 128-134.

RIGHT OF WAY THROUGH INDIAN RESERVATION. *See* INDIANS, 47, 48.

#### b. Assistant Secretary.

20. **The consideration and determination of appeals to the Secretary of the Interior from the Commissioner of the General Land Office** may be made by the Assistant Secretary of the Interior, under a regulation prescribed by the Secretary, pursuant to section 439, Revised Statutes. 19 Op. 133.

18 Op. 432 affirmed. *Ib.*

21. **Same.**—When the Assistant acts at a time the Secretary is not absent or sick, under a regulation made by the Secretary prescribing his powers, he should sign with his own proper official designation. *Ib.*

22. **Same.**—When the Secretary is absent or sick, if the Assistant is in charge of the Department, in pursuance of sections 177 or 179, Revised Statutes, he should sign as Acting Secretary. *Ib.*



PURCHASES FROM CONTINGENT FUND. *See* DEPARTMENT OF THE INTERIOR, 7; EXECUTIVE DEPARTMENTS, 71, 72.

c. *Commissioner of Indian Affairs.*

23. **Acceptance of Indian Supplies.**—Where a contract for the delivery of certain supplies at an Indian agency provided for the acceptance of goods inferior in quality to the sample where the emergency demanded it, the question whether the necessities of the service compelled acceptance of the articles offered was a question determinable only by the Commissioner of Indian Affairs or his agents, under the direction of the Secretary of the Interior. 17 Op. 384.

24. **Removal of trespassers from Indian reservation.**—The Commissioner of Indian Affairs and his subordinate, the Indian agent, have full discretion under sections 2118, 2147, and 2149, Revised Statutes, to remove from the Puyallup Indian Reservation, Wash., any person not of the tribe of Indians entitled to remain thereon, and in so doing may, by direction of the President, use any military force necessary for the purpose. 20 Op. 245.

25. **Same.**—An order of a State court restraining the Indian agent from so doing is beyond its jurisdiction and void, and should be disregarded. *Ib.*

COMMISSIONER OF PATENTS. *See* III, Patent Office.

III. Bureaus or Offices.

a. *Patent Office.*

26. **Review of decisions of the Commissioner of Patents.**—The Secretary of the Interior has the authority, under section 441, Revised Statutes (see also sec. 481, Rev. Stat.), to review a decision of the Commissioner of Patents made in an interference case under Rule 110, Rules and Practice of the Patent Office, upon a motion to amend a preliminary statement. 17 Op. 205.

27. **Promulgation of a rule limiting appeals to six months.**—It is not unlawful for the Commissioner of Patents, with the approval of the Secretary of the Interior, to promulgate a rule limiting appeals to six months from the time

when the matter is in condition for appeal. 21 Op. 122.

28. **Same.**—A rule or regulation made by the Commissioner of Patents and adopted and approved by the Secretary of the Interior, under section 483, Revised Statutes, is a regulation prescribed by the head of a Department, and as such, when not inconsistent with law, has the force of law and is taken judicial notice of by the courts. *Ib.*

29. **Legal advice.**—The Commissioner of Patents should submit to the law officers assigned to the Department of the Interior questions arising in the administration of his Department upon which legal advice is desired. 21 Op. 174.

b. *Pension Office.*

30. **The Commissioner of Pensions is not invested with power to audit and adjust accounts for the last sickness and burial of deceased pensioners arising under section 4718, Revised Statutes.** This power belongs solely to the proper accounting officers of the Treasury by virtue of section 236, Revised Statutes. 17 Op. 440.

Opinion of April 28, 1882 (17 Op. 339), distinguished. *Ib.*

*See also* 20 Op. 178.

31. **It is the duty of the Commissioner of Pensions, in a case where money has been paid on a pension certificate alleged to have been fraudulently obtained, to furnish the Solicitor of the Treasury with all the material facts and evidence in the case at his command, or which he can obtain, including facts and evidence with regard to certificates of deposit and mortgages that have been made and purchased with part of such money, and in every way in his power to aid in the prosecution of such suits as may be brought.** 19 Op. 210.

32. **Special examiners of the Pension Bureau authorized to be appointed by the act of July 7, 1884 (23 Stat. 187), and by the act of March 3, 1885 (23 Stat. 418), come within the purview of the civil-service act of January 16, 1883 (22 Stat. 403); and in appointing such officers the latter act and rules thereunder should be observed.** 18 Op. 172.

33. **Same.**—The term of service to which a special examiner is appointed is one year. The office is as new a creation by the act of

March 3, 1885, as it was by the act of July 7, 1884. *Ib.*

**34. Medical referee—Medical examiners and law clerks—Civil service.**—The officers in the Pension Bureau described as medical referee, assistant medical referee, medical examiners, and law clerk, being "exclusively professional," do not fall within the operation of the civil-service law; they are excepted therefrom by Rule XIX. 18 Op. 187.

**35. Principal examiners.**—Those described as principal examiners for review board are not excepted and in appointing them the civil service law and regulations should be observed. *Ib.*

**36. Five supervising examiners.**—The special authority given by the act of July 11, 1888 (25 Stat. 286), to appoint or detail five supervising examiners in the Bureau of Pensions, with headquarters in the District of Columbia, is prohibitory of the appointment or detail of a greater number for the District or for places other than the District. 19 Op. 327.

*See also Pensions.*

#### *c. General Land Office.*

**37. Commissioner of General Land Office—Auditing of accounts relating to public lands.**—The First Comptroller has no power to direct the Commissioner of the General Land Office forthwith to audit any particular account relating to the public lands, where in his opinion further delay would be injurious to the Government. 18 Op. 450.

**38. Same.**—The Commissioner, with respect to the discharge of his duties in such matter, is subject only to the direction of the Secretary of the Interior. *Ib.*

APPEALS TO THE SECRETARY, CONSIDERATION OF BY THE ASSISTANT SECRETARY. *See* DEPARTMENT OF THE INTERIOR, 20-22.

TIMBER DEPREDACTIONS. *See* PUBLIC LANDS, XIII.

#### *d. Indian Office.*

**39. The proceeds of sales of articles manufactured in Indian manual and training schools** should be received by the Indian Bureau and used for the benefit of the Indian children in the schools. 17 Op. 531.

#### *e. Census Office.*

**40. Payment of certificates issued to employees after assignment.**—An order may be

made by the Secretary of the Interior directing payment of the certificates given by the Superintendent of the Census in cases where such certificates are assigned in strict conformity to section 3477, Revised Statutes. 17 Op. 266.

**41. The Director of the Census and his subordinates are not subject to the supervision, control, or direction of the Secretary of the Interior.** 22 Op. 413.

**42. Same.**—The Secretary of the Interior is not required to approve the selection of appointees, the plan for taking the census, or of making contracts for supplies, etc. *Ib.*

**43. Same.**—By section 2 of the act of March 3, 1899 (30 Stat. 1014), the Census Bureau is made a part of the Interior Department, and as such its accounts are subject to such rules and regulations as the Secretary may prescribe, pursuant to section 27 of the act of 1894 (28 Stat. 211). *Ib.*

**44. Same.**—Expenditures incurred by the Director of the Census, within the limits authorized by the act of 1899, are proper and lawful, and the Secretary of the Interior should approve them, if it is his duty to do so at all, as a ministerial act, and not as one in which he is to exercise judgment or discretion touching the wisdom or advisability of the expenditure. *Ib.*

**45. Same.**—Questions with reference to the manner of drawing funds from the Treasury, and the administrative examination of the accounts of the officer disbursing them, is one which should be submitted to the Comptroller of the Treasury, under section 8 of the act of July 31, 1894 (28 Stat. 208). *Ib.*

SEAL FOR CENSUS OFFICE. *See* DEPARTMENT OF COMMERCE AND LABOR, 8, 9.

*See also* DEPARTMENT OF COMMERCE AND LABOR, III.

#### *f. Geological Survey.*

**46. The appropriation made by the act of June 16, 1880 (21 Stat. 259, 274), "for the expenses of the Geological Survey, and the classification of the public lands, and examination of the geological structures, mineral resources, and products of the national domain, to be expended under the direction of the Secretary of the Interior," is not applicable to the payment of rent of the building in Washington, D. C., leased from Dr. J. W. Bulkley, July 9,**

1880, and used as offices for the Geological Survey. 17 Op. 87.

47. *Same*.—That appropriation not being "in terms" made for the rent of any building or part of any building in the District of Columbia to be used by the Geological Survey, and no provision therefor being made elsewhere, the lease of July 9, 1880, was forbidden by the act of March 3, 1877 (19 Stat. 363, 370), and is void. *Ib*.

## DEPARTMENT OF JUSTICE.

### I. In General, 1-5.

### II. Officers, etc., 6-10.

#### I. In General.

1. **Direct tax cases**—Stipulation waiving right of appeal.—It is unwise for the Department of Justice to adopt any general rule waiving by stipulation the right of appeal from judgments of the Court of Claims in direct tax cases, thus allowing the payment of such claims prior to the expiration of the ninety days within which appeals must be taken. 20 Op. 547.

2. **Matters relating to the employment of special counsel in foreign countries** for the institution of suits on behalf of the United States for the recovery of damages caused to war vessels of the United States should be referred to the Department of Justice. 21 Op. 195.

3. **Suits by the United States**.—The Department of Justice is charged with the duty of determining when the United States shall sue, for what it shall sue, and that such suits shall be brought in appropriate cases. *Ib*.

4. **Whether or not an act constitutes a crime** is a question that in but rare instances can arise except in the Department of Justice. 21 Op. 133.

5. **Exportation of arms and warlike material to China**.—The Department of Justice can do nothing to restrict the exportation of arms and warlike material to China during the present insurrectionary movements in that country. 24 Op. 26.

### II. Officers.

**Attorney-General**. See ATTORNEY-GENERAL.

6. **The Solicitor of the Treasury** is an officer of the Department of Justice and not of the Treasury Department. 20 Op. 714.

See also TREASURY DEPARTMENT, 143-145.

7. *Same*.—**Power to instruct district attorneys**.—An action for the recovery of duties on goods previously smuggled would be a suit "in which the United States is a party, or interested," within the meaning of section 379, Revised Statutes, and as such the Solicitor of the Treasury has power to instruct district attorneys in regard thereto. *Ib*.

8. *Same*.—**Suits and proceedings by the receiver of a failed national bank** are, under section 380, Revised Statutes, within the duties of a district attorney, acting under the direction of the Solicitor of the Treasury. 20 Op. 476.

9. *Same*.—The district attorney's compensation therefor is not regulated by the fee bill prescribed by statute, nor should it be paid by the Government and not out of the fund of the trust, but the amount of fees to be allowed in any given case is a matter to be adjusted by the Comptroller in the exercise of a legal discretion under the advice of the Solicitor of the Treasury. *Ib*.

10. **Examiners**—Prosecution of claims against the United States.—Section 190, Revised Statutes, prohibiting employees of any of the Executive Departments from prosecuting certain claims against the United States for two years after the termination of their employment, applies to examiners of the Department of Justice. 20 Op. 696.

## DEPARTMENT OF STATE.

### I. In General, 1-6.

### II. Officers, 7-20.

#### I. In General.

1. **Records of**—**Right of the Spanish Treaty Claims Commission** to call for certified copies of records.—Section 8 of the act of March 2, 1901 (31 Stat. 879), which provides that all reports, records, or other documents now on file or of record in the Department of State, or in any

other Department, or certified copies thereof, relating to any claims prosecuted before the Spanish Treaty Claims Commission, shall be furnished to the Commission upon its order, vests in the head of that Department a discretion to send either the original papers or certified copies thereof, upon a request of the Commission for certified copies of such papers. 23 Op. 470.

**2. Fees of consular agents.**—The proposed regulation of the State Department that consular agents, "as compensation for their services to American vessels and seamen and for other official acts, shall receive one-half the official fees collected for such services: *Provided*, Such compensation shall not exceed in any fiscal year the sum of \$1,000; and all such fees in excess of such compensation shall be remitted to the consul in whose district the agency is located," is consistent with sections 1703 and 1733, Revised Statutes. 22 Op. 1633.

**3. Landing of Cables.**—The application of the Commercial Cable Company for leave to land its cable in the United States is within the jurisdiction and control of the Department of State, acting for the President. 22 Op. 408.

*See also* CABLES.

**4. Claims of foreign subjects against Hawaii** which accrued prior to annexation should be presented to the Department of State and thence transmitted to the government of Hawaii for adjustment. 22 Op. 583.

**5. Passports.**—The provisions of sections 4075 and 4076, Revised Statutes, which confer upon the Secretary of State the authority to issue passports to citizens of the United States, are not in terms mandatory, and that officer may, in his discretion, either grant or withhold a passport as the public interests may require. 23 Op. 509.

**6. Extradition from Mexico—Rearrest and trial for a crime other than the one for which extradited.**—Acosta, having been returned from Mexico to the State of Florida under extradition proceedings, to be punished for a crime committed within that State, was convicted and sentenced to imprisonment. Upon his release he was arrested for another crime without having an opportunity of returning to Mexico. Demand having been made upon the State Department by the Mexican Government for his release, and it not appearing that the prisoner has made an

attempt to invoke his right to return to Mexico: *Held* that any action by the Department of State at this time to secure his release would be premature. 23 Op. 604.

*See also* 13; and Extradition.

## II. Officers.

### *Secretary of State.*

**7. The chief clerk, chiefs of bureaus, and translators of the State Department are clerks** within the meaning of section 169, Revised Statutes, and are to be appointed by the Secretary of State. 21 Op. 363.

**8. Appointment of stenographers and typewriters.**—An appointment by the Secretary of State, without reference to or conformity with the regulations prescribed for appointments in the classified service, made pursuant to the act of July 1, 1898 (30 Stat. 645), authorizing the temporary employment of stenographers and typewriters in his Department, is lawful. 22 Op. 556.

**9. Copies of Congressional documents ordered from the Public Printer under section 90 of the public printing and binding act of January 12, 1895 (28 Stat. 623), by the Secretary of State to a number not exceeding the number of bureaus in his Department, should not be charged to the allotment of the Public Printer's appropriation for such Department.** 21 Op. 423.

**10. Director of the Bureau of American Republics.**—The Secretary of State of the United States is authorized to appoint the Director of the Bureau of American Republics without the assent of the other countries contributing to the support of the Bureau, and to remove such director and appoint another in his place without such assent. 20 Op. 558.

**11. Monthly Bulletin of the Bureau of American Republics—Advertisements in.**—It is competent for the Secretary of State to prohibit the publication in the Monthly Bulletin of the Bureau of American Republics of advertisements of private firms or corporations. 21 Op. 514.

**12. Extradition.**—The Secretary of State has power to review the proceedings in an extradition case certified to him, and his power extends to the review of every question therein

presented, under section 5272 Revised Statutes. 17 Op. 184.

*See also*, 6.

**13. Passports.**—The provisions of sections 4075 and 4076, Revised Statutes, which confer upon the Secretary of State the authority to issue passports to citizens of the United States, are not in terms mandatory, and that officer may, in his discretion, either grant or withhold a passport as the public interests may require. 23 Op. 509.

**14. Certificates of the votes of a State not delivered to the President.**—It is the duty of the Secretary of State, under the provisions of section 141 Revised Statutes, as amended by the act of October 19, 1888 (25 Stat. 613), to send a special messenger to the district judge holding the certificates of the votes of his State, in each of the four States where the messenger has failed to deliver to the President on the fourth Monday in January, 1893, the package containing the certificate of the votes of his State. 20 Op. 522.

**15. Same.**—The expression "Whenever a certificate of votes from any State has not been received," as found in the act of October 19, 1888 (25 Stat. 613), should be construed so as to read "whenever any certificate of votes required by law from any State has not been received." *Ib.*

**16. Sureties on official bonds—Corporations.**—It is competent for the Secretary of State, under section 1697 Revised Statutes, to accept as sureties upon official bonds of United States consular officers, corporations organized under State or United States laws as surety or guaranty companies authorized by their charter to undertake such obligations. 20 Op. 16.

**17. Reid claim—Brig "General Armstrong"**—No authority to pass upon.—Under the power conferred by the act of May 1, 1882 (22 Stat. 697), the Secretary of State had no authority to pass upon the claim of Mr. Reid to be reimbursed expenses incurred by him as agent in the prosecution of the claims of the "captain, owners, officers, and crew" of the brig *General Armstrong*. 17 Op. 626.

**18. Same.**—The Secretary of State is not required to make payment or recognize the claim of S. C. Reid, as administrator of the estate of Henry Coit, one of the claimants to the *Armstrong* fund, which administration

was obtained upon an erroneous statement that the estate owed him a sum equal to one-half of Coit's share of a fund remaining in the hands of the State Department, for the reason that Reid has been paid in full, and that his claim is barred by the Statute of Limitations, and precluded from recovery by the decisions of the State Department. 20 Op. 372.

**19. Same.**—The United States, as trustee for the true owner or as the *ultima hares*, is entitled to be heard in the disposition of the amount claimed, and should intervene by way of suggestion to the court that the letters of administration be vacated and set aside. *Ib.*

*See also* CLAIMS 13–28.

**20. Construction of wharf at Wakefield, Va.**—The Secretary of State can not lawfully, under the terms of the joint resolution of Congress approved February 25, 1893 (27 Stat. 756), authorize the construction of a wharf at Wakefield, Va., different in character from that specified in the resolution, even if from a change of circumstances the construction of that sort of wharf with that appropriation has become impracticable. 20 Op. 653.

#### DEPARTMENTAL REGULATIONS.

*See* EXECUTIVE DEPARTMENTS, III; AND THE SEVERAL EXECUTIVE DEPARTMENTS INDIVIDUALLY.

#### DEPARTMENTAL PRACTICE AND CONSTRUCTION.

*See* EXECUTIVE DEPARTMENTS, VI; ATTORNEY-GENERAL, II, h.

#### DEPORTATION.

*See* CHINESE, V.

#### DEPOSIT.

OF SAVINGS. *See* NAVY, 10, 115–117.

OF PUBLIC MONIES. *See* DISBURSING OFFICERS OR AGENTS.

#### DEPOSITORY.

OF MAIL. *See* POSTAL SERVICE, 166, 167.

**DEPUTY MARSHALS.**

*See UNITED STATES MARSHALS.*

**DEPUTY SURVEYORS OF CUSTOMS.**

*See CUSTOMS LAW, II, d.*

**DEserter.**

WHO REENLISTS. *See ARMY, I, b.*  
FROM GERMAN VESSELS. *See EXTRADITION, 13.*  
DESERTING SEAMEN. *See SEAMEN, 25.*

**DESIGNS.**

FOR COINS OF THE UNITED STATES. *See TREASURY DEPARTMENT, 174.*

**DESTRUCTION OF MERCHANDISE HELD IN BOND.**

*See CUSTOMS LAWS, III, g.*

**DETAIL.**

OF CLERKS TO THE CIVIL SERVICE COMMISSION. *See CIVIL SERVICE, II, e.*  
OF REGISTRY CLERK TO WHITE HOUSE. *See POST-OFFICE DEPARTMENT, 13.*  
OF ARMY OFFICERS TO COLLEGES. *See ARMY, 86-89.*  
OF MEN OF THE MARINE CORPS. *See NAVY, III, a.*

**DINGLEY ACT.**

(Act of July 24, 1897, 30 Stat. 151.)

**DIPLOMAS.**

*See EXPOSITIONS AND FAIRS, 23, 28.*

**DISCHARGE CERTIFICATE.**

*See ARMY, 201.*

**DIPLOMATIC AND CONSULAR OFFICERS.**

**I. Diplomatic, 1-2.**

**II. Consular, 3-27.**

**III. Foreign Representatives, 28-34.**

**I. Diplomatic.**

**1. Minister-resident—Bond—Commission—Duties—Pay.**—A person appointed minister resident and consul-general who takes the oath of office, but fails to execute a bond as required by section 1697, Revised Statutes, and his commission is, accordingly, not delivered to him—is not qualified to receive the commission or to enter upon the duties of the office, and consequently is not entitled to pay as an incumbent of such office. 18 Op. 157.

**2. The chargé d'affaires to Paraguay and Uruguay,** whose office was raised to minister, but who did not receive his commission or take the oath of office until nearly two months after appointment, is entitled to salary as minister from the date on which he qualified and entered upon the duties of the office, and not from the date of his appointment. 19 Op. 219. (2 Op. 27, 638; 3 Op. 105, 124, 641; 4 Op. 123, 250, 318, 348; 5 Op. 132; 7 Op. 304; 10 Op. 250, 308.)

**II. Consular.**

**3. Consular officers—Bonds—Corporations** may be accepted as sureties.—It is competent for the Secretary of State, under section 1697, Revised Statutes, to accept as sureties upon official bonds of United States consular officers, corporations organized under State or United States laws as surety or guaranty companies authorized by their charter to undertake such obligations. 20 Op. 16.

**4. Inspection certificates.**—Consular officers of the United States can not extend expired inspection certificates granted to American steamers, nor is there any authority of law for sending local inspectors out of the country to make inspection. 21 Op. 52.

**5. Declaration to invoice.**—The person making the declaration to an invoice of goods intended for shipment from a foreign country to the United States under sections 2 and 3

of the customs administrative act of June 10, 1890, is not required to be actually present before the consul, vice-consul, or commercial agent of the United States in order to authorize such consular officer to certify such invoice. 21 Op. 571.

6. *Same.*—All that is necessary in order to authorize such consular officer to certify the invoice produced, with the declaration indorsed thereon signed, and with the oath attached, is that he shall be satisfied that the person making the oath thereto is the person he represents himself to be; that he is a credible person, and that the statements made under such oath are true. *Ib.*

7. *Same.*—Where the consular officer has doubts as to the identity of the person making the declaration, as to his credibility, or as to the truthfulness of the statements set forth in the declaration, he would have the right to require the declarant to come personally before him. *Ib.*

8. *Discharge of seaman.*—The United States consul-general at Panama was justified in discharging a seaman where both master and seaman requested it, and where, although no unusual or cruel treatment was claimed, yet from the evident ill will displayed by the master he had reason to fear that such treatment would supervene. 22 Op. 212.

9. Under the laws and usages governing the American consular service, the authentication, noting, etc., of marine protests are to be regarded as official consular services. 19 Op. 196.

10. Consuls in barbarous or semi-barbarous states are to be regarded as investing with extraterritoriality the place where their flag is planted, and if justice is to be administered at all, so far as concerns civilized foreigners visiting such states, it must be by tribunals such as are named in section 4088, Revised Statutes. 18 Op. 219.

11. *Same.*—Where a citizen of the United States, trading in the island of Gnapp, a barbarous or semi-civilized country, was charged with cruelty and inhumanly punishing a boy on said island: *advised* that the case is cognizable by a consul or commercial agent under the provisions of section 4088, Revised Statutes, and that a special commercial agent might be sent to the island for the trial of the accused. *Ib.*

12. The sentence of imprisonment imposed in any of the consular courts of China may be served out in the prison at Shanghai and not necessarily within the limits of the consul's ordinary jurisdiction. 20 Op. 391.

13. The question as to whether the consul's jurisdiction is limited to the cognizance of matters occurring within the territory nearer his consulate than to any other consulate of the United States in China is not one which it is proper for the Attorney-General to answer, as it does not arise in the administration of an Executive Department, and is therefore purely hypothetical. *Ib.*

*See also* CONSULAR COURTS.

14. When a consul intervenes in a controversy between master and seamen, by mutual consent of the disputants, he acts as an arbitrator and not as consul. 21 Op. 201.

15. *Sale of American vessel, unseaworthy.*—A United States consul at a foreign port is without authority to direct the sale of an American vessel which has become unseaworthy at that port and whose master has notified him that he has abandoned the vessel. 17 Op. 552.

16. *Same.*—In such case the consul should notify the owners of the condition of their property and in the meantime care for it. *Ib.*

17. *Same.*—The sales mentioned in the Consular Regulations of 1874 are sales under the authority of the master, the intervention by consul being for the purpose of ascertaining the existence of those conditions which under general law authorize the sale. *Ib.*

18. *Same.*—Where, on application of the master, an American vessel, Brig *Mary C. Comery*, lying in a foreign port was condemned as unseaworthy by the port officers, the presumption in favor of the validity of those proceedings is a strong one, and it does not appear to be the duty of the American consul to do more than see that the foreign law as to jurisdiction, etc., is being observed. *Ib.*

19. *Consuls—Fees for furnishing inspection cards—Unofficial service.*—The President may prescribe a fee, as provided by section 1745, Revised Statutes, for the services of a consul in furnishing inspection cards to steerage passengers on vessels destined to the United States, as required by the quarantine regulations of April 1, 1903, but he has no authority to declare such a fee unofficial and to permit the consul to retain it as such. 24 Op. 672.

20. *Same*.—No service by a consul can be unofficial when the applicant has a right to demand it and the consul no right to refuse it. *Ib*.

21. **Consular service—Fees.**—Under the laws and usages governing the American consular service, the authentication, noting, etc., of marine protests are to be regarded as official consular service. 19 Op. 196.

22. **Certified consular invoice—Fees.**—The new edition of the Consular Regulations of 1888 contains provisions making the fee for a consular certificate to an invoice of merchandise not subject to duty, official and returnable to the Treasury. 19 Op. 225.

23. *Same*.—The fee for such certificate may be rendered official by Executive order, and specially included in the tariff of official fees under the Revised Statutes. *Ib*.

24. **Fees.**—Foreign-built vessels owned by citizens of the United States are not exempted by the act of June 26, 1884 (23 Stat. 53), from the payment of fees for services of consuls. 18 Op. 111.

25. *Same*.—Foreign-built vessels owned by citizens of the United States are not within the provisions of the act of June 26, 1884 (23 Stat. 53), forbidding the collection of fees by consular officers from American vessels. 18 Op. 234.

26. **Consular agents—Compensation.**—The proposed regulation of the State Department that "consular agents, as compensation for their services to American vessels and seamen and for other official acts, shall receive one-half the official fees collected for such services: *Provided*, Such compensation shall not exceed in any fiscal year the sum of \$1,000; and all such fees in excess of such compensation shall be remitted to the consul in whose district the agency is located," is consistent with sections 1703 and 1733, Revised Statutes. 22 Op. 163.

27. A person placed in charge of a consular office by the incumbent of the consulate, but without appointment and qualification as prescribed by the Constitution and laws of the United States, can not lawfully perform the regular official duties of the post, nor should he be permitted to perform those other unofficial services, such as notarial services, which a consul is not required by law to perform, but the chief value of which depends entirely on

the fact that the person rendering them is a consular officer. 20 Op. 92.

ARMY OFFICER WHO ACCEPTED CONSULAR POSITION CEASED TO BE A MILITARY OFFICER *eo instanti*. See ARMY, 106-109.

CLAIM AGAINST CONSUL FOR MONEY PAID HIM FOR CLOTHING SUPPLIED WRECKED CREW. See CLAIMS, 72, 73.

CONVICTS OF CONSULAR COURTS, JURISDICTION. See CONSULAR COURTS.

### III. Foreign Representatives.

28. **Head tax—Alien diplomatic officers.**—The act of March 3, 1903 (32 Stat. 1213), which requires the payment by transportation companies of a duty of \$2 for each and every passenger not a citizen of the United States, or of Canada, Mexico, or Cuba, who shall be brought into the United States by them, applies as well to alien officials coming into the United States on diplomatic missions as to aliens who are private individuals and come here for other purposes. 25 Op. 370.

29. *Same*.—Charge upon transportation companies.—The duty thus imposed is not a tax upon the officials of foreign governments, but is merely a charge imposed upon the transportation company for every passenger brought into the United States by it. *Ib*.

30. **Hunters' license—Foreign representatives—Exemption.**—There being no Federal statute requiring the payment of a license tax for the privilege of hunting or shooting upon territory subject to the jurisdiction of the United States, it follows that no exemption from its payment has been made in favor of the diplomatic or consular representatives of foreign governments residing within the United States. 23 Op. 607.

31. The issuance of a writ of execution against the person or chattels of a foreign minister is a "suing out" within the meaning of section 4064, Revised Statutes, and renders the party obtaining such writ liable to the penalty prescribed. 17 Op. 563.

32. *Same*.—Cases within that section should be prosecuted by the United States attorney of the proper district, as other misdemeanors are prosecuted.

33. *Same*.—The marshal in whose hands the writ is placed for execution is not an "officer



concerned in executing it" under the statute, where he merely serves notice upon the minister, but does not in fact execute the writ. *Ib.*

34. A foreign consul, resident in the United States, must look for protection in his personal and property rights to the laws of the State in which he resides. 19 Op. 16.

#### DIRECT TAXES.

1. **Indiana—Set-off.**—It is the duty of the Secretary of the Treasury to withhold from the amount to be paid the State of Indiana, under the act of March 2, 1891 (26 Stat. 822), providing for a refund of the direct taxes collected under the act of August 5, 1861 (12 Stat. 292), an amount equal to the indebtedness of that State to the United States arising from certain overpayments. 20 Op. 363.

2. **Kansas—Set-off.**—The amount claimed to be due from the State of Kansas to the United States on account of the direct tax should be retained out of the amount appropriated for payment to that State by the act of March 3, 1881 (21 Stat. 414, 428). 17 Op. 228.

3. **Mississippi—Set-off unwarranted.**—The withholding the amount of the "2 and 3 per cent funds" due the State of Mississippi, and crediting the State therewith on account of the direct tax, was unwarranted by law, as no liability rests upon the State for the payment of such tax. 17 Op. 671.

4. **Tennessee.**—The Secretary of the Treasury is authorized under the act of March 2, 1891 (26 Stat. 822) providing for the refund of direct taxes, to pay to the governor of Tennessee as trustee moneys received by the United States on the resale of land in Tennessee in excess of the tax assessed thereon, and of the amount bid therefor at the original sale made for the collection of the direct tax. 20 Op. 701.

5. **Vermont.**—The Secretary of the Treasury is authorized under the act of March 2, 1891 (26 Stat. 822) to repay to the State of Vermont, the full amount of the direct tax collected under the act of August 5, 1861 (12 Stat. 292), notwithstanding the existence of an unadjusted claim of the United States for arms, accouterments, clothing, etc., over-

drawn by that State during the Civil War, under the act of 1808 (now sec. 1661 R. S.), a portion of which were afterwards sold by the State, and the proceeds covered into the Treasury, and against which the State has a counter claim for uniforms, garrison and camp equipage, etc., furnished its own military organizations during that war. 20 Op. 134.

6. **Same.**—The act of March 3, 1875 (18 Stat. 455), directing the Secretary of War to credit to the respective States the sums charged against them for overdrawal of arms and the ordnance stores during the civil war, upon a showing by such States of a faithful disposition thereof, and to refuse credit where such stores have been sold or otherwise misapplied, is without effect upon the question above considered. *Ib.*

7. **West Virginia—Set-off.**—Section 3481, Revised Statutes, makes it the duty of the Secretary of the Treasury to insist upon the right of set-off against the demands of the State of West Virginia for refund of the direct tax to the extent of the equitable proportion of the debt of Virginia to the United States for which West Virginia is liable. 20 Op. 240.

8. **Interest and penalties** are collections within the meaning of the act of March 2, 1891 (26 Stat. 822), and should be repaid the same as the direct taxes authorized by that act; but costs attending the collection should not be repaid, as such funds never came into the Treasury of the United States. 20 Op. 412.

9. **Same.**—Where, under the act of June 7, 1862 (12 Stat. 422), redemptions of lands held for direct taxes were made, the party in interest should be refunded the tax, penalties, and interest paid by him for such redemption. *Ib.*

10. **Same.**—The act of 1891 supersedes the provisions in the act of March 3, 1883 (26 Stat. 595) in regard to the surplus proceeds of lands sold for direct taxes, and it is now the duty of the Secretary of the Treasury to repay not merely the surplus but the entire amount collected under that law and brought into the Treasury. *Ib.*

#### DIRECTIONS ON MAIL MATTER.

See POSTAL SERVICE, IV.

**DIRECTOR OF THE MINT.**

*See* TREASURY DEPARTMENT, II, d.

**DISABILITY.**

INCURRED IN THE LINE OF DUTY. *See* PENSION, II, 57-63.

**DISBURSEMENT.**

OVERPAYMENT OF ARMY OFFICERS. *See* ARMY, 168-177.

**DISBURSING OFFICERS OR AGENTS.**

1. **Deposit of moneys received.**—A special disbursing agent of the board of town-site trustees of Oklahoma Territory who deposited moneys received by him as such agent in two banks that suspended payment, is liable, with his sureties, for any loss that may arise from the failure of these banks, and he is not relieved from liability by the fact that these banks were designated by the board of trustees as places of deposit. 20 Op. 24.

2. **Same.**—The regulations of the Secretary of the Interior, providing for the designation by the town-site board of a bank for the depositing of money in the hands of the disbursing agent, must be construed in the light of sections 3639 and 3620 of the Revised Statutes to limit power of designation by the board to banks which are lawful depositories of public money within the statutes, which these banks were not. *Ib.*

3. **Same.**—The fact that some of the money so deposited was collected from assessments, and never in the Treasury, is immaterial, inasmuch as it was public money, and his bond expressly bound him to account for all public moneys coming into his hands. *Ib.*

4. **Checks or drafts issued by the disbursing officers** of the United States upon Government funds on deposit, in payment of its obligations or dues, are exempt from the stamp tax of 1898 (30 Stat. 448). 22 Op. 134.

5. **Checks of disbursing officers** of the Government drawn upon the public Treasury or an assistant treasurer of the United States may be properly indorsed and transferred by

either the payee, indorsee, or by an agent of either acting as such under a power of attorney from such payee or indorsee. 22 Op. 637.

6. **The five years' limitation** fixed by section 2 of the act of August 8, 1888 (25 Stat. 387), within which suits may be brought upon the official bonds of disbursing officers of the Government begins to run from the time the accounting officers of the Treasury make the statement of the account showing an indebtedness to the United States. 22 Op. 611.

*See also* TREASURY DEPARTMENT, II, i; PUBLIC BUILDINGS, 26-37.

**DISCHARGE.**

*See* ARMY, 15, 126.

**DISCRIMINATING DUTIES.**

*See* CUSTOMS LAWS, IV, e.

**DISMISSAL.**

*See* ARMY, 122-125; NAVAL ACADEMY.

**DISPATCH BOAT "DOLPHIN."**

*See* NAVY, 194.

**DISPENSARY LAW.**

*See* SOUTH CAROLINA.

**DISPOSAL OF USELESS PAPERS.**

*See* TREASURY DEPARTMENT, I, c.

**DISTILLERY.**

*See* INDIAN TERRITORY, 5.

**DISTILLERY WAREHOUSES.**

*See* INTERNAL REVENUE, V.

**DISTRIBUTION.**

ARMS TO THE MILITIA. *See* ARMY, 220-222.

LOYAL CREEK FUND. *See* INDIANS, 147.

MONEYS DUE ON CONTRACTS. *See* TREASURY DEPARTMENT, I, b; CONTRACTS, VI, b.

UNITED STATES REPORTS. *See* COURTS, 7-16.

**DISTRICT ATTORNEYS.**

*See* UNITED STATES ATTORNEYS.

**DISTRICT OF COLUMBIA.****I. In General, 1.****II. Laws, Regulations, etc., 2-7.****III. Officers and Employees, 8-26.****IV. Charitable Institutions, 27-34.****V. Parks, Reservations, and Grounds, 35-49.****VI. Water Supply, 50-60.****VII. Land Titles, 61-64.****VIII. District Militia, 65-70.****IX. Claims Against, 71-74.****I. In General.**

1. The District of Columbia is a corporate agent, through which the United States administers certain executive functions over the locality which includes the national capital. The chief executive authority is vested in three Commissioners, and the assistant attorney of the District is an officer under and appointed by them. 18 Op. 161.

**II. Laws, Regulations, etc.**

2. Code—Commissions of judges of the police court.—Section 42 of the municipal code for the District of Columbia, which goes into effect January 1, 1902 (31 Stat. 1196), does not vacate the commissions of the judges of

the police court nor require new appointments of such judges. 23 Op. 572.

3. Building line in Georgetown.—The approval of the Secretary of War is required for projections beyond the building line in that part of the city of Washington formerly known as Georgetown. 23 Op. 9.

4. Same.—Congress has power to prevent all projections beyond the building line in any part of the city of Washington, as now established, and therefore may permit projections upon such conditions as it may see fit to impose. This power is in no wise dependent upon the ownership of the fee in the streets. *Ib.*

5. Wharves—Licenses for erection of.—The Chief of Engineers of the Army is not and never has been vested with authority to grant licenses for the erection of wharves along the river front of the city of Washington, D. C. 18 Op. 441.

6. Steam engineers.—Section 7 of the act of February 28, 1887 (26 Stat. 427), to regulate steam engineering in the District of Columbia, withdraws from the operation of section 6 of that act *all* steam engineers holding Federal or State licenses. 19 Op. 25.

7. Saturday—Half holiday.—“Every Saturday after 12 o'clock noon” is a holiday for all purposes within the District of Columbia, and is therefore one of the “days declared public holidays by law” within the meaning of the statutes regulating the number of hours of labor which must be required of all clerks and employees in the Executive Departments. Consequently, heads of Departments are not obliged to require labor of such clerks, etc., after the hour of noon on Saturdays. 25 Op. 40.

**III. Officers and Employees.**

8. Commissioners—Term of office.—All appointments to the office of Commissioner of the District of Columbia, are, with the exception of the first two, to be for the term of three years. (Sec. I of the act of June 11, 1878, 20 Stat. 103.) 17 Op. 158.

9. Same.—The word “term,” or “terms,” in this statute, means “term of service.” *Ib.*

10. The official term of each of the Commissioners of the District of Columbia, appointed

from civil life, excepting the first two appointments, is three years (act of June 11, 1878, 20 Stat. 103); and in case of the death, resignation, or removal of the incumbent during such term, his successor should be appointed, not for the full term of three years, but for the unexpired term of such incumbent, if any remains. 17 Op. 476.

Opinion of July 7, 1880 (16 Op. 537), disented from. *Ib.*

**11. Commissioners—Can not act without full Board.**—No power is expressly conferred by statute upon any two of the Commissioners of the District of Columbia to act without the third, and it seems that the three Commissioners should be present and acting when any business of importance pertaining to their office is to be transacted. 17 Op. 354.

**12. Accounts for disbursements—Accounting officers of the Treasury.**—Section 4 of the act of June 11, 1878 (20 Stat. 102), which requires the Commissioners of the District of Columbia to render accounts for their disbursements thereunder to the accounting officers of the Treasury for adjustment and settlement, necessarily implies that the settlement and adjustment shall be in accordance with the laws and regulations and usages by which those officers are governed, so far as the same are applicable to such accounts. 17 Op. 574.

**13. Same.**—The provisions of sections 3623 and 3678, Revised Statutes, are applicable to the Commissioners, and they and their bondsmen are liable to suit on their bond for the recovery of balances found due from them on settlement of their accounts. *Ib.*

**14. The Commissioners of the District of Columbia** are, by the act of March 3, 1893 (27 Stat. 537), given the supervision and control of expenditures for the Freedman's Hospital and Asylum. Otherwise the relations of the Secretary of the Interior and that institution are unchanged by that act. 20 Op. 652.

**15. Sale of land in District of Columbia—Conveyance.**—The power given the Commissioners of the District of Columbia by the sixth section of the act of March 3, 1881 (21 Stat. 467), "to sell to the highest bidder at public auction" all the right, title, and interest of the United States in and to a certain lot of ground situated in the city of Washington, carries with it authority to make a

conveyance to such bidder, as an incident to the execution of the power. 17 Op. 100.

**16. Advised that an assistant attorney of the District of Columbia is not an officer of the Government or of the United States** within the provisions of sections 1782 and 5498, Revised Statutes, prohibiting such officers from acting as agents or attorneys in the prosecution of any claim against the United States, etc. 18 Op. 161.

**17. The District of Columbia is a corporate agent, through which the United States administer certain executive functions over the locality which includes the national capital.** The chief executive authority is vested in three Commissioners, and the assistant attorney in question is an officer under and appointed by them. *Ib.*

**18. Auditor for the District.**—A clerk in the office of the auditor of the District of Columbia who was appointed a referee by the Court of Claims under the provisions of the act of June 16, 1880 (21 Stat. 284), and performed services as such, and in consideration of such services received certificates issued by the court fixing the amount of compensation allowed therefor, is entitled to receive the amount thus allowed. 18 Op. 303.

**19. Board of fire commissioners—May be abolished.**—The Commissioners of the District of Columbia have power, under the act of June 11, 1878 (20 Stat. 102, 104), to abolish a part or the whole of the board of fire commissioners of said District. 17 Op. 494.

**20. The civil-service act of January 16, 1883 (22 Stat. 403), can not lawfully be applied to the officers and employees of the District of Columbia.** 22 Op. 59.

**21. Same.**—The officers and employees of the District of Columbia are not officers and employees of the General Government of the United States, but of the municipal corporation known as the District of Columbia. *Ib.*

**22. Same.**—Such officers and employees are as distinct from the civil service of the United States as would be the officers of any city government in one of the States of the Union from the civil service of the State itself. *Ib.*

**23. A notary public appointed for the District of Columbia has no power to take acknowledgments of deeds in foreign countries, where he may at the time be, for property situated in said district.** 19 Op. 81.

**24. Police force—Removal.**—Under the provisions of the act of July 11, 1878 (20 Stat. 102, 107), the Commissioners of the District of Columbia have power, in their discretion, to remove members of the police force of the District of Columbia without such trial as is contemplated by section 356 of the Revised Statutes of said District. 17 Op. 489.

**25. Register of wills—Recorder of deeds.**—The President has power to require a bond of the register of wills and the recorder of deeds of the District of Columbia, for the faithful accounting by them of the fees received by them, and he may likewise prescribe periods at which such accountings shall be had and payments made by them into the Treasury of the United States. 20 Op. 508.

**26. The watchmen employed by the Government** under the act of August 5, 1882 (22 Stat. 243), for service in the public squares or reservations in the District of Columbia, are by that act invested with the powers of the metropolitan police, and may make arrests outside of such squares and reservations for offenses committed within the same. 18 Op. 433.

#### IV. Charitable Institutions.

**27. The Columbia Institution for the Deaf and Dumb** is not a part of the Interior Department, and advertisements for proposals under section 3709, Revised Statutes, are not required for supplies for services for this institution. 21 Op. 349.

**28. The Columbia Institution for the Deaf and Dumb** is in the Department of the Interior, in the sense that its expenditures of public money are under the supervision of the head of that Department and subject to the provisions of section 3709, Revised Statutes, in the matter of making purchases and contracts for supplies or services. 22 Op. 1.

**29. Freedmen's Hospital and Asylum.**—The relations of the Secretary of the Interior and the Freedmen's Hospital and Asylum are unchanged by the act of March 3, 1893 (27 Stat. 537), save that the Commissioners of the District of Columbia are given the supervision and control of expenditures for the Freedmen's Hospital and Asylum. 20 Op. 652.

**30. Freedman's Hospital—Water main.**—The Secretary of the Interior has authority to

prevent the Commissioners of the District of Columbia from laying a water main across the land upon which the Freedmen's Hospital is to be erected. 25 Op. 515.

**31. Same.**—The permission granted the Commissioners of the District of Columbia by the Chief of Engineers in charge of the public buildings and grounds in the District to lay a water main across the land upon which the Freedmen's Hospital is to be erected was a mere license, without consideration, and, being still executory, is revocable at will. *Id.*

**32. The Government Hospital for the Insane, the Washington Hospital for Foundlings, the Columbia Institution for the Deaf and Dumb, and the Freedmen's Hospital and Asylum** are charitable or eleemosynary institutions within the meaning of the act of June 6, 1900 (31 Stat. 664), which creates a Board of Charities for the District of Columbia. 23 Op. 287.

**33. Same—Supervision—Board of Charities—Secretary of the Interior.**—The Board of Charities has general supervision of these institutions, and, under the order of the District Commissioners, has power of investigation with the duty of submitting a report and recommendation to Congress. With this exception, the powers and duties of the Secretary of the Interior are unchanged by the act of June 6, 1900, and remain the same as before its enactment. *Id.*

**34. Insane persons indicted in United States Courts outside of the District of Columbia.**—The provision in section 4851, Revised Statutes, that "if any person charged with crime be found in the court before which he is charged to be an insane person, such court shall certify the same to the Secretary of the Interior, who may order such person to be confined in the hospital for the insane," etc., applies only to persons charged with crime before the courts in the District of Columbia; it does not extend to persons indicted in United States courts elsewhere.

#### V. Parks, Reservations, and Grounds.

**35. Rock Creek Park—Selection and acquisition of lands.**—The Rock Creek Park Commission, limited by the act creating it to the expenditure of a certain sum of money, and having assessed the value of the land pro-

posed to be taken at less than that amount, but fearing that many of the owners will not accept the amounts awarded, and that the assessments in a judicial proceeding would cause the entire cost to exceed the amount appropriated, should nevertheless proceed with its work, and if necessary make selection and acquire such of the lands selected most to be desired as will come within the appropriation. 20 Op. 67.

**36. Commission may purchase certain lands by agreement although proceedings have been commenced for assessment of value.**—The mere fact that the law authorizing the acquisition of land for Rock Creek Park, of date September 27, 1890 (26 Stat. 492), requires the Commission, if unable to agree with the owner of the land selected within thirty days' time, to apply for an assessment of the value of such land as it has been unable to purchase at its assessed price, does not preclude the Commission from later purchasing by agreement the land of certain property owners, although judicial proceedings have been commenced for the assessment of the value of the land. 20 Op. 129.

**37. Report of appraisers on valuation—President not authorized to decide that such prices are reasonable if total is in excess of appropriation.**—Where an appropriation for acquiring title to land for a public park is limited to \$1,200,000, and the law requires the President to decide that the prices to be paid for various parcels of land are reasonable, and the Commission appointed by the act has presented for his decision a report of appraisers in condemnation that would make the cost of the park considerably exceed that amount, it would not be lawful for the President to decide that the prices as submitted are reasonable. 20 Op. 326.

**38. Same.**—The President is authorized to determine, parcel by parcel, whether the valuation of the lands embraced within the reduced area of the contemplated Rock Creek Park, as recommended by the Rock Creek Park Commission, bringing the total cost within the amount appropriated by the act of September 27, 1890 (26 Stat. 492), is reasonable or unreasonable. 20 Op. 377.

**39. Same.**—The validity and regularity of the proceedings culminating in the above recommendation are judicial questions, for

the determination of the court and not for the Executive. *Id.*

**40. Rock Creek Park—Reservoir.**—The board of control of Rock Creek Park, created by the act of September 27, 1890 (26 Stat. 492), has no power to authorize the water department of the District of Columbia to construct a reservoir for the use of the District within the limits of that park. 21 Op. 566.

**41. Zoological Park Commission—Expenses—Erection of buildings, etc.**—The Commission created by section 4 of the act of March 2, 1889 (25 Stat. 808), for the establishment of the Zoological Park in the District of Columbia, have authority to defray out of the appropriation made by that section all necessary expenses incidental to the selection and acquisition of the land for the park, but not to apply the appropriation to laying out the land, erecting buildings thereon, etc. The provisions of that section extend no further than the selection and acquisition of the land. 19 Op. 286.

**42. Eviction of unlawful occupants of the public lands in.**—The only intent of section 1797, Revised Statutes, as amended by the act of April 28, 1902 (32 Stat. 152), is to empower the United States marshal of the District of Columbia to eject summarily transient or disturbing persons from the public grounds in the District under the direct supervision of the Chief of Engineers, and does not apply to occupants who have been in actual possession, under a claim of right, for a long period of years. In such cases the Government should apply to the courts to obtain possession. 24 Op. 616.

**43. Same.**—Section 1797, Revised Statutes, as amended by the act of April 28, 1902 (32 Stat. 152), authorizes summary proceedings against those persons only who are in unlawful occupancy of public buildings or grounds in the District of Columbia. This involves the question of title of the United States to the property in question, and the officer charged with this duty must determine correctly, at his peril, that the occupant is such trespasser. 25 Op. 18.

**44. Same.**—The above section does not authorize the summary deprivation of a rightful possession without due process of law; and, except in a few rare instances, mere legislation, or ministerial acts under it, would not be due process. *Id.*

45. **Same.**—Occupants of lands in the District of Columbia who have been in possession thereof for a number of years under claim of title are not required to establish their right in court, and thereby relieve the Government from the burden of first establishing its own title or right to possession, as it must, if these are contested. *Ib.*

46. **Same.**—The marshal has no discretion in the performance of the duty imposed upon him by the statute, and in so doing has the same right to summon assistance that he has in executing other lawful process. *Ib.*

47. **Unlawful occupation of public grounds.**—Secretary of the Interior.—Section 1818, Revised Statutes, which directs the Secretary of the Interior to prevent the unlawful occupation of "the public streets, avenues, squares, or reservations in the city of Washington," is still in force and has not been modified by subsequent legislation, including that portion of the act of April 28, 1902 (32 Stat. 152), amendatory of section 1797, Revised Statutes, which imposes a similar duty on the Chief of Engineers in regard to "the public buildings and grounds in the District of Columbia." 25 Op. 111.

48. The laying of conduits or erection of overhead wires for electric lighting in any park or reservation in the District of Columbia for the purpose of lighting the park or reservation is prohibited under the act of March 3, 1897 (29 Stat. 673), making appropriations for the District of Columbia. 21 Op. 545.

49. The unauthorized stretching of wires across the Iowa Reservation in the District of Columbia is governed by section 1818, Revised Statutes, and should be brought to the attention of the Secretary of the Interior. 21 Op. 224.

## VI. Water Supply.

50. **Washington Aqueduct.**—The act of July 15, 1882 (22 Stat. 168), entitled "An act to increase the water supply of the city of Washington, and for other purposes," is operative as well in the State of Maryland as in the District of Columbia; it may also affect riparian rights and the title to soil in the State of Virginia. 17 Op. 587.

51. **Same.**—Acquisition of land.—The steps to be taken under that act are (1) the survey

and preparation of maps for the extension of the aqueduct, for the reservoir, for the land necessary for the dam, including the land now occupied by the dam, and for the land on which the gatehouse at Great Falls stands; (2) the Attorney-General must proceed to ascertain the owners or claimants of the premises embraced in the survey by making a publication describing said lands, with notice that the same has been taken; (3) the Secretary of War may then take possession of the premises and proceed with the construction. *Ib.*

52. **Same.**—Work on the project need not be delayed until Congress shall appropriate a sum equal to the assessed value of the land needed. *Ib.*

53. **Same.**—Proceedings for the condemnation of the land for the reservoir can not be commenced in advance of those for the condemnation of lands for the aqueduct extension and the dam at Great Falls. The statute contemplates but one survey and map, and but one publication, etc. *Ib.*

54. **Washington Aqueduct tunnel.**—The Secretary of War may extend the time for the completion of the work on the Washington Aqueduct tunnel, under the contract with Beckwith & Quackenbush, in case the work is not completed by the 1st of November, 1888. 19 Op. 192.

55. **Same.**—The clause in the act of March 30, 1888, namely, "all of said work to be completed by November first, eighteen hundred and eighty-eight," is to be understood as directory merely. *Ib.*

56. **Same.**—Construction of contract.—Provisions of the contract with Messrs. Beckwith & Quackenbush, entered into on October 29, 1883, for the construction of a tunnel to increase the water supply of Washington, D. C., and of the agreements supplementary thereto, considered with reference to certain inquiries propounded, and *advised* (19 Op. 287):

57. That should Major Lydecker, or his successor, legally appointed, with the sanction of the Chief of Engineers, annul the contract, and give notice thereof to the contractors, the right of the latter to make good the defective work may legally be denied; but so long as the contracts remain in full force the contractors have the right, at their own ex-

pense, within a reasonable time, to make the defective work good. *Ib.*

58. That should the contracts be annulled, as above, the contractors can not be legally compelled thereafter to make the defective work good, but they can be made liable for the actual necessary expenditure which the Government may incur in making it good. *Ib.*

59. That to meet such liability the Government may retain any money it now has, to which the contractors would have been entitled had the work been good. *Ib.*

60. That the expenditure authorized by the resolution of October 19, 1888, includes expenses attending the inspection of the repairs necessary to protect and preserve the work already done, but not those attending the inspection of other work. *Ib.*

#### VII. Land Titles.

61. Correction of records—Title to land in Washington, D. C.—Claimant having furnished the War Department sufficient proof that for a period of more than twenty years next before the passage of the act of March 3, 1899 (30 Stat. 1346), he was in the actual and uninterrupted possession of and had paid the taxes upon lot 5 in square 1113 in the city of Washington, is entitled, under section 2 of that act, to have the records of the War Department so corrected as to show the title to said lot to be in him. 23 Op. 21.

62. Potomac River—Title to land—Commencement of work.—The provision in the act of August 2, 1882 (22 Stat. 198), making it "the duty of the Attorney-General to examine all claims of the title to the premises to be improved under this appropriation," i. e., the appropriation "for improving the Potomac River in the vicinity of Washington," etc., does not forbid the commencement of the work until the Attorney-General shall have performed the said duty. 17 Op. 453.

63. Same.—The existence of certain claims of title to the "Potomac flats" is not an obstacle to the expenditure of the appropriation made by the act of July 5, 1884 (23 Stat. 138). 18 Op. 66.

64. Same.—Title of the United States to certain parts (Secs. II and III, as indicated on a map submitted) of the Potomac Flats improvement considered, and advised that the prohibition contained in the acts of August 5, 1886 (24 Stat. 335, 336), against the expenditure of money appropriated for the improvement, does not apply to such parts. 18 Op. 437.

EVICITION FROM PUBLIC LANDS. See DISTRICT OF COLUMBIA, 42-46.

#### VIII. District Militia.

65. National Guard.—An employee of an Executive Department absent from his duty while at Omaha, Nebr., at a prize drill, duly ordered thereto by a superior officer of the National Guard of which he was a member, is entitled to his pay while absent. 20 Op. 437.

66. Same.—Employees of the United States who are members of the National Guard are not entitled to leave of absence from their respective duties without loss of pay or time in order to engage in rifle practice, even although in the general orders of the commanding general of the militia such rifle practice may be called a parade. 20 Op. 669.

67. Same.—Rifle practice is not a parade within the meaning of section 49 of the act of March 1, 1889 (25 Stat. 779). *Ib.*

68. Same.—Section 49 of the act of March 1, 1889 (25 Stat. 779), in regard to leaves of absence of officers and employees of the United States who are members of the District of Columbia National Guard, was not repealed or modified by section 5 of the act of March 3, 1893 (27 Stat. 715). The object of the former was to provide for the public defense and that of the latter to regulate leaves of absence for private reasons or purposes. 21 Op. 353.

69. Same.—Leaves of absence of employees of the Government in the discharge of military duties are not to be charged to the thirty days allowed them annually for rest and recreation. *Ib.*

70. The commanding general of the National Guard of the District of Columbia, though accepting a commission and acting as colonel in the Volunteer Army, for service in the war with Spain, is still the commanding officer of the District militia, and is author-



ized, under the act of May 11, 1898 (30 Stat. 404), to nominate candidates for appointment as officers in the naval battalion. 22 Op. 237.

### IX. Claims against the District of Columbia.

**71. Claim of Samuel Strong—Payment of award.**—Where a special tribunal of arbitrators appointed under a joint resolution of July 10, 1888 (25 Stat. 1248), to arbitrate and settle certain claims of Samuel Strong against the District of Columbia, which resolution provided that payment of the award should be made "in the same manner that judgments against the District of Columbia are paid when ordered by the Court of Claims," and where various assignments of the claim were made both before and after the award, and the claimant was enjoined by the Supreme Court of the District from receiving payment of the award; and where the several suits were consolidated and receivers appointed by the court to receive payment of the award, and the claimant also demands payment thereof to him, *Held* that the Secretary of the Treasury can not properly pay the award either to the receivers or to the claimant, but should hold the fund until the controversy between the claimant and his assignees, now pending in the Supreme Court of the District, shall have been finally determined by a decree. 19 Op. 450.

**72. Same—When payment may be made.**—It is only when payment is made under the compulsion of an order of a court of competent jurisdiction that the party paying is relieved of liability as to the money paid, and the Secretary of the Treasury is not subject to the jurisdiction of the said court with regard to the fund in question. *Ib.*

**73. Same.**—The case of *George H. Giddings* (16 Op. 367) distinguished from the present case. *Ib.*

**74. Same—Settlement.**—Questions arising in settlement of an award made under a joint resolution of Congress approved July 10, 1888 (25 Stat. 1248), to arbitrate and settle certain questions at issue between the District of Columbia and Samuel Strong, relative to the amount of the award, parties to whom pay-

able, and rates of interest, considered and answered. 21 Op. 87.

**CIVIL SERVICE.** See DISTRICT OF COLUMBIA, 20, 22.

**INSANE.** See DISTRICT OF COLUMBIA, 34.

**NAVAL BATTALION.** See DISTRICT OF COLUMBIA, 70.

**POTOMAC FLATS.** See DISTRICT OF COLUMBIA, 62-64.

**SALE OF LAND, CONVEYANCE.** See DISTRICT OF COLUMBIA, 15.

**STEAM ENGINEERS.** See DISTRICT OF COLUMBIA, 6.

**TRANSIENT PAUPERS, MEDICAL TREATMENT OF.** See ARMY, 43.

**WHARVES, LICENSES FOR ERECTION OF.** See DISTRICT OF COLUMBIA, 5.

### DOCKERY ACT.

(Act of July 31, 1894, 28 Stat. 162.)

### DOLPHIN, DISPATCH BOAT.

See NAVY, VII, 194.

### DOUBLE PENSIONS.

See PENSIONS, 5-7.

### DRAFT ACT.

(Act of Mar. 3, 1863, 12 Stat. 731.)

### DRAFTSMEN.

See CIVIL SERVICE, IV, a.

### DRAWBACK.

See CUSTOMS LAW, VI, b.

**DRAGOON BARRACKS LOT, ST. AUGUSTINE,  
FLA.**

*See* UNITED STATES, 88.

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**DRAWBRIDGES.**

*See* NAVIGABLE WATERS, 159, 162–164.

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**DREDGE.**

*See* NAVIGABLE WATERS, II, 62, 63.

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**DRY DOCK.**

*See* CONTRACT, II, 84; EIGHT HOUR LAW, 24;  
NAVY DEPARTMENT, II, 21.

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**DUE PROCESS OF LAW.**

*See* CONSTITUTIONAL LAW, 5; WORDS AND  
PHRASES, 66.

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**DUTIABLE VALUE.**

*See* CUSTOMS LAW, IV, a.

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**EADS CONTRACT.**

*See* NAVIGABLE WATERS, II, b.

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**EAGLE.**

DEVICE ON FIRE ARMS. *See* FIRE ARMS.

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**EAST RIVER.**

*See* NAVIGABLE WATERS, 3.

**EIGHT-HOUR LAW.**

1. **Construction of.**—The opinions of former Attorneys-General construing the provisions of the act of June 25, 1868 (15 Stat. 72), known as the eight-hour law (sec. 3738, Rev. Stats.), reviewed, and the following conclusions deduced therefrom (17 Op. 341):

2. That the act prescribes the length of time which shall constitute a day's work, but it does not establish any rule by which the compensation for a day's work shall be determined. *Ib.*

3. That it does not contemplate a reduction of wages simply *because* of the reduction thereby made in the length of the day's work; but, on the other hand, it does not *require* that the same wages shall be paid therefor as are received by those who in similar private employments work a greater length of time per day. *Ib.*

4. That it does not forbid the making of contracts for labor, fixing a different length of time for the day's work than that prescribed in the law. *Ib.*

5. That this exposition of the act is in harmony with the opinion of the Supreme Court in the case of *United States v. Martin* (94 U. S. 400). *Ib.*

6. The act of June 28, 1868 (15 Stat. 77), embraced in section 3738, Revised Statutes, known as the eight-hour law, prescribes the length of time which shall constitute a day's work for employees of the Government; but it does not establish any rule by which the compensation for a day's work shall be determined—this being left to be fixed in the ordinary or customary manner where the law does not otherwise provide. 18 Op. 389.

7. **Same.**—That act does not contemplate a reduction of wages simply because of the reduction thereby made in the length of the day's work; but, on the other hand, it does not require that the same wages shall be paid therefor as are received by those who, in similar private employments, work a greater length of time per day. This matter of wages is to be dealt with as pointed out in the preceding paragraph, having due regard to the public interests. *Ib.*

8. **Same.**—It does not forbid the making of contracts for labor, fixing a different length of time for the day's work than that prescribed in the law. *Ib.*

9. *Same.*—The provisions of the act are not applicable to mechanics, workmen, and laborers who are in the employment of a contractor of the United States. It was not intended that the act should extend to any others than, the immediate employees of the Government. *Ib.*

10. *Same.*—All persons who are employed and paid by the day are included within the act, even though they do not fall within the strict language of "laborers, workmen, and mechanics." *Ib.*

11. *Same.*—Where there is a special agreement between the employer—in this case the Government—and the laborer that the laborer shall work less or more than eight hours a day, and it is reasonable, there is nothing in the statute to prohibit such a contract. *Ib.*

12. *Same.*—Where the employees understood that they were to work nine or ten hours per day or to be discharged, and continued in employment with that understanding, they must be held to the conditions of a contract both voluntary and reasonable, and they can not now recover as for overtime. *Ib.*

13. *Same.*—The act is a legislative declaration that for the persons described therein eight hours a day is a reasonable day's labor; and where the public interests can be subserved, this should be a guide to officers, both civil and military, in contracting for the public service. *Ib.*

14. The eight-hour law merely prescribes a unit of measure for a day's labor in the absence of any specific contract. 19 Op. 685.

15. In awarding contracts for supplies for the Government under section 3709, Revised Statutes, no account can be taken of the fact that the contractor's employees work over eight hours a day. *Ib.*

16. The eight-hour law, act of August 1, 1892 (27 Stat. 340), as to laborers and mechanics in the direct employ of the Government and of the District of Columbia, is of general application, and the limitation as to public works in that act applies only to such persons as are in the employ of contractors and subcontractors. 20 Op. 459.

17. *Same.*—Whether or not specified persons are such laborers is a question of fact not for the Attorney-General to determine. *Ib.*

18. The Attorney-General is not authorized to give his opinion upon the application of the eight-hour law to a proposed contract, where

the contractors whose bids have been accepted desire to be advised before signing the contract what portion of the work that law will affect, as it is not a question which the Secretary of the Treasury is called upon to decide. 20 Op. 463.

19. *Same.*—It is not permissible for the Attorney-General to give an opinion upon the application of the eight-hour law to contracts for the construction of levees on the Mississippi River, as that is not a question arising in the administration of one of the Departments. 20 Op. 465.

20. *Same.*—The Attorney-General declines to express an opinion as to whether certain employees of the Mississippi Commission are "laborers" or "mechanics" within the meaning of the act of August 1, 1892 (27 Stat. 340), for the reason that those words are used in the statute in their ordinary sense, and the determination of that question is, therefore, a matter of administration only, involving the ascertainment of a question of fact, upon which the Attorney-General is not authorized to express an opinion. 20 Op. 487.

21. *Same.*—The Attorney-General declines to give an opinion as to whether the so-called eight-hour law is applicable to a certain contract for public work, for the reason that the contractor and not the Secretary of the Treasury is responsible for a violation of the law. 20 Op. 500.

22. The eight-hour law (act of Aug. 1, 1892, 27 Stat. 340), providing that laborers employed on public works of the United States shall be limited in service to eight hours a day, does not apply to a contract for furnishing materials such as post-office lock boxes, to be used in a Government building. 20 Op. 454.

23. A bid which was formally accepted four days prior to the act of August 1, 1892 (27 Stat. 340), limiting to eight hours daily labor upon public works of the United States, but which left the determination of minor details and the formal execution of the contract to a later date, was not a contract within the meaning of section 3 of that act. 20 Op. 445.

24. *Same.*—A timber dry dock is one of the "public works" of the United States under the eight-hour law of August 1, 1892. *Ib.*

25. Certain employees at the Fort Leavenworth military prison, some of them desig-

nated "foremen of mechanics," are not "laborers and mechanics" within the eight-hour law of August 1, 1892 (27 Stat. 340). 21 Op. 32.

26. **Panama Canal.**—The act of August 1, 1892 (27 Stat. 340), which limits and restricts to eight hours the daily service of laborers and mechanics employed by the Government of the United States or by any contractor or subcontractor upon the public works of the United States, applies to the employment of laborers and mechanics in the construction of the Panama Canal. 25 Op. 441.

27. **Same.**—That act, however, does not apply to the office force of the Isthmian Canal Commission stationed on the Isthmus of Panama, or to any of the employees of the Government who are not within the ordinary meaning of the words "laborers and mechanics." *Ib.*

28. **Same.**—The scope of the act is not limited by the territorial jurisdiction of Congress, but is coextensive with the subject-matter to which it was directed, to wit, the conduct of officers and agents of the United States in respect to the hours of labor of mechanics and laborers upon all public works of the United States. *Ib.*

29. **Same.**—Congress may fix the hours of labor upon all the works of the United States, wherever conducted, and make the law binding upon the officers of the United States and, through the agency of contracts, upon all contractors with the United States.

30. **Panama Railroad.**—The words "laborers and mechanics" as used in the eight-hour law of August 1, 1892 (27 Stat. 340), apply to all persons who may fairly come within the description of laborers and mechanics, whether they are paid by the year, by the month, or by the day. 25 Op. 465.

31. **Same.**—The above-named act does not apply to laborers and mechanics in the employment of the Panama Railroad and Steamship Line, such persons being employed by the corporation and not by the United States. *Ib.*

#### ELECTORAL VOTES.

1. It is the duty of the Secretary of State, under the provisions of section 141, Revised Statutes, as amended by the act of October

19, 1888 (25 Stat. 613), to send a special messenger to the district judge holding the certificates of the votes of his State, in each of the four States where the messenger has failed to deliver to the President on the fourth Monday in January, 1893, the package containing the certificate of the votes of his State. 20 Op. 522.

2. The expression "whenever a certificate of votes from any State has not been received," as found in the act of October 19, 1888 (25 Stat. 613), should be construed so as to read "whenever any certificate of votes required by law from any State has not been received." *Ib.*

#### ELECTIONS.

**Special deputy marshals—Compensation.**—Where an inspector of customs, while holding that office, rendered service as a special deputy marshal under section 2031, Revised Statutes: *Held*, that he is prohibited by the third section of the act of June 20, 1874 (18 Stat. 109), from receiving any compensation for such service beyond his salary as inspector of customs. 17 Op. 684.

#### ELECTION LAWS.

*See* UTAH.

#### "ELEU," STEAM TUG.

*SALE OF.* *See* HAWAII, 41.

#### ELIGIBILITY.

*See* CIVIL SERVICE, III, a; POSTAL SERVICE, II, b, 43.

#### ELLIS, E. JOHN.

CONTRACT WITH INDIANS. *See* INDIANS, V, 128-134.

#### ELLIS ISLAND.

*See* IMMIGRATION, VII.

**EMERGENCY PURCHASES.**

*See* ARMY, I, g.

**EMINENT DOMAIN.**

1. The Secretary of War has full authority under the river and harbor act of August 18, 1894, (28 Stat. 359), and the act of April 24, 1888, (25 Stat. 94), to condemn the land necessary for the construction of a boat railway provided for in the former act. 21 Op. 221.

2. *Same.*—If a change in the location of an existing railroad is a necessity in the building of said boat railway, the acquisition by the Secretary of War of the necessary land to make such a change is merely an incident to the enterprise intrusted to him. *Ib.*

3. Philippine insular government—Land required by United States for military posts.—A good title can be acquired by the United States to land in the Philippine Islands required for use as military posts under either section, 1 or 2, of the act of the Philippine Commission of March 5, 1903 (No. 665), the method provided by section 1 being slightly more circuitous than that provided by section 2, in that it provides for condemnation by the Philippine insular government and subsequent transfer to the United States. 24 Op. 640.

4. States may acquire land by condemnation for the Federal Government. Decision in the case of *Trombley v. Humphrey* (23 Mich. 472), held to be erroneous. *Ib.*

5. The Philippine government derives the power of eminent domain from section 63 of the organic act (32 Stat. 706). *Ib.*

6. The Secretary of the Treasury can not by contract bind the Government to exercise its power of eminent domain to enable persons to sell to the Government land which they do not own. 19 Op. 269.

CONDEMNATION. *See* PUBLIC BUILDINGS, 2, 11, 14, 19-21; RESERVATIONS AND PARKS, 7, 29; UNITED STATES, V, 73, 75-80.

**EMPLOYMENT.**

OF COUNSEL. *See* DEPARTMENT OF AGRICULTURE, III, 17; DEPARTMENT OF JUSTICE, 2; NAVY DEPARTMENT, II, 18.

OF TROOPS. *See* ARMY, 1-9.

OF HONORABLY DISCHARGED SOLDIERS. *See* CIVIL SERVICE, V; DEPARTMENT OF COMMERCE AND LABOR, III, 26-28.

**ENGINEER CORPS.**

*See* NAVY, IV.

**ENGINEER'S LICENSE.**

ALTERATION OF. *See* STEAMBOAT INSPECTION SERVICE, 16.

**ENGRAVING AND PRINTING.**

*See* PUBLIC PRINTING, III.

**ENTRY.**

*See* CUSTOMS LAWS, III, a; SHIPPING, I, f; PUBLIC LANDS, I.

**EQUITY.**

A bill in equity will not lie against the State of Minnesota for the purpose of vacating a patent issued to that State under the swamp-land grant, on the mere ground that the land thus patented was not in fact swamp land. 19 Op. 684.

*See also* CALIFORNIA DÉBRIS COMMISSION, 5.

**ESCHEAT.**

*See* UNITED STATES NAVAL ASYLUM AT PHILADELPHIA.

**EVICTIION.**

*See* DISTRICT OF COLUMBIA, 42-47.

**EVIDENCE.**

1. In conspiracy cases, proof of the acts and declarations of the alleged conspirators may be introduced, although not properly admissible at the time, because community of intent and

design had not been established; but if received, the error may be cured by the subsequent introduction of proof of the conspiracy existing at the time the alleged declarations were made. 22 Op. 589.

2. Testimony tending to show such a relation or understanding between alleged conspirators as indicates a purpose to defraud the Government by means of contracts for public works to be given out and carried on under charge of the accused is admissible, even though it relates to matters antedating the time of the particular conspiracy charged. *Id.*

3. Indictment for smuggling—Proceeding in rem.—To support an indictment under sections 2865 and 3082, Revised Statutes, there must be sufficient evidence of a criminal intent, while a proceeding *in rem* to forfeit, under sections 2802 and 3061, Revised Statutes, presents a civil liability rather than an offense, and does not require proof of such intent. 23 Op. 64.

4. Citizenship of Chinese.—A certificate of the governor and commander in chief of the colony of Hongkong and its dependencies and vice-admiral of the same, to the effect that he believes a person to be a British subject, is not competent evidence to prove such citizenship. 20 Op. 424.

*See* COURTS-MARTIAL, III.

#### EXAMINER.

*See* CUSTOMS LAW, II, e, 45; DEPARTMENT OF THE INTERIOR, III, b, 36.

#### EXAMINATION.

*See* CIVIL SERVICE, III, a, (65, 69, 72), b; NAVY, III, b, 125–132.

#### EXCHANGE.

OF GOLD BARS FOR GOLD COIN. *See* TREASURY DEPARTMENT, 171–173.

#### EXCLUSION.

OF CANNED AND CHOPPED MEATS. *See* FOOD PRODUCTS, 9.

OF CHINESE. *See* CHINESE, IV, V.

#### EXCLUSIVE JURISDICTION.

*See* UNITED STATES, V; PUBLIC BUILDINGS, 38–40.

#### EXECUTIVE ACTION.

1. After statute is repealed.—Mistakes, if any, made in the execution of an act which is subsequently repealed, can not be rectified by Executive action after such repeal. 17 Op. 60.

2. No mere omission or failure to provide for contingencies, for which it might have been wise to provide specifically justifies any judicial or Executive addition to the language of a statute. 22 Op. 405.

#### EXECUTIVE CLERK.

*See* PRESIDENT, XI, 98.

#### EXECUTIVE COUNCIL.

*See* PORTO RICO, 30–33.

#### EXECUTIVE DEPARTMENTS.

I. In General, 1–14.

II. Officers and Employees.

a. *Generally*, 15–18.

b. *Heads of Departments*, 19–43.

c. *Clerks and Employees*, 44–48.

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III. Rules and Regulations, 51–55.

IV. Contracts, 56–70.

V. Expenditures, 71–73.

VI. Departmental Practice, 74–84.

VII. Official Mail, 85.

#### I. In General.

1. What constitutes.—The term “Executive Departments” in the Federal statutes refers only to those Departments specified in section 158, Revised Statutes, to which has since been added the Department of Agriculture. 22 Op. 62.

2. Same.—No board, commission, bureau, or office which is not expressly or by implication under the control of one of the Executive Departments can be considered as belonging properly to one of them. *Ib.*

3. Same.—The Civil Service Commission is not attached in any wise to any of the Executive Departments, nor is it subject in any wise to the control of any of the heads of such Departments. *Ib.*

4. The Civil Service Commission is not an Executive Department within the meaning of section 190, Revised Statutes, respecting the prosecution of claims. 25 Op. 6.

5. Hours of labor.—Section 7 of the act of March 15, 1898 (30 Stat. 316), requires seven hours of labor each day of clerks and other employees of the several Executive Departments, and does not permit of the allowance of half an hour for luncheon within the seven hours. 22 Op. 62.

6. Same.—“Every Saturday after 12 o'clock noon” is a holiday for all purposes within the District of Columbia, and is therefore one of the “days declared public holidays by law” within the meaning of the statutes regulating the number of hours of labor which must be required of all clerks and employees in the Executive Departments. Consequently, heads of Departments are not obliged to require labor of such clerks, etc., after the hour of noon on Saturdays. 25 Op. 40.

7. Same.—Heads of Departments must require at least seven hours' labor of all their clerks and other employees every day in the year except Sundays and days declared to be holidays by section 1389 of the Code of the District of Columbia, and during authorized leave; and, if the public service requires it, the hours of labor may be extended by special order and may include holidays as well as ordinary days. *Ib.*

8. Printing and binding.—Section 3706, Revised Statutes, which requires all binding for the Executive Departments to be done at the Government Printing Office does not include illustrations and engravings, maps, or charts. 20 Op. 41.

9. Same.—Number of copies of Government publications allowed.—The head of an Executive Department has no right under section 90 of the printing act of January 12, 1895 (28 Stat. 623), to make a requisition upon the Public Printer for a greater number of copies of

Government publications, other than “bills and resolutions,” than the number of bureaus in the Department and divisions in the office of the head thereof. 21 Op. 370.

10. Same.—Where cost is charged against the printing appropriation of Department.—He has, however, the right to make such requisition, provided the cost of printing is to be charged against the printing appropriation for his Department, and the Public Printer has no authority to pass upon the character of publications which he may deem essential for carrying out the work of his Department. *Ib.*

11. Printing of special reports of bureau chiefs.—Section 89 of the act of January 12, 1895 (28 Stat. 622), authorizes the printing of 2,500 copies of special as well as annual reports of Department bureau chiefs, when such printing is directed by the head of a Department. 25 Op. 377.

12. Official opinions of the Attorney-General should be followed by other Departments. 20 Op. 648.

13. Transfer of land from one Executive Department to another.—The Secretary of the Navy has authority to transfer control of certain land at San Juan, P. R., reserved by Executive order for naval purposes, to the Department of Commerce and Labor, for the extension of the light-house reservation at that place. 25 Op. 269.

14. Supplies furnished by one Department to another—Reimbursement.—Where one Department receives from another Department supplies which are within the scope of appropriations belonging to each a reimbursement of the appropriation of the one from the appropriation of the other, of the cost of such supplies, is not a violation of section 3678, Revised Statutes; nor do the provisions of section 3618, Revised Statutes, apply to such case. 17 Op. 480.

LEAVES OF ABSENCE. See LEAVES OF ABSENCE.

## II. Officers and Employees.

### a. Generally.

15. Temporary appointments to fill vacancies.—Section 180, Revised Statutes, providing that vacancies occasioned by the death or resignation of an officer of an Executive Department must not be temporarily filled

for a longer period than ten days, applies as well where they are filled (under secs. 177 or 178, Rev. Stats.) without action by the President, as where they are filled (under sec. 179, Rev. Stats.) by his authority and direction. 17 Op. 535.

**16. Same.**—The discretionary power given the President by section 179, Revised Statutes, may be exercised after the vacancy has already been supplied under the operation of either of the two preceding sections; and in that case the ten days' limitation is to be computed from the date of the President's action. *Ib.*

*But see* 39-43. *See also* OFFICE AND OFFICERS, II.

**17. Vacancy**—Subordinate filling office temporarily.—Where the office of Sixth Auditor became vacant by the death of the incumbent, and the duties thereof devolved by operation of the statute upon the deputy auditor: *Advised* that the period during which such duties may be discharged by the deputy is limited by statute to ten days. 18 Op. 50.

**18. Temporary recess appointments.**—The President has the right under the Constitution, and impliedly under section 181, Revised Statutes, to make a temporary appointment, designation, or assignment of one officer to perform the duties of another in the case of a vacancy caused by death, disability, or otherwise, during the recess of the Senate, and such temporary appointment, designation, or assignment is not limited by law to any particular period. 25 Op. 258.

#### b. Heads of Departments.

**19. Communications to Congress.**—Requests made on heads of Departments by Congressional committees, or by either House of Congress, for information on matters relating to ordinary and current legislation, may with propriety be answered directly, without passing through the Executive office; otherwise as to communications which concern radical changes in existing laws affecting public policy. 17 Op. 254.

**20. Same.**—Subordinate officers of the several Departments should communicate with Congress through the heads of their Departments, respectively. *Ib.*

**21. Act of head of an Executive Department** sometimes the act of the President.—Many

things may be done by the head of an Executive Department without the actual signature of the President, which, when done, are his acts; but in such case the documents should declare it to be the act of the President performed by the head of the Department as his representative. 22 Op. 82.

**22. Can not allow contractor to withdraw bid after acceptance.**—The head of an Executive Department is not at liberty to allow a contractor to withdraw his bid after acceptance, upon the ground of an error in stating the amount he intended to bid. 17 Op. 70.

**23. Same.**—A bid or proposal, and its acceptance by an Executive Department, constitute an obligation of the same force and effect as if a formal contract had been written out and signed by the parties. *Ib.*

*See also* CONTRACTS, I, b.—Bids.

**24. Personal liability.**—The head of a Department incurs no personal liability by executing an instrument which should not have been executed if he acts in reliance upon properly chosen subordinates whose ability and good faith he has no reason to question. 20 Op. 573.

**25. Cooperation with a contractor in assignment of balance due.**—The head of a Department is prohibited by section 3477, Revised Statutes, from cooperating with a contractor having a balance due him in the Treasury in assigning this balance to an outsider before the issuing of a warrant or warrants for payment of the amount proposed to be assigned. 20 Op. 578.

**26.** It is competent for a head of a Department to alter the disposition among the various bureaus and offices of his Department, of the clerks allowed by law, as he may find it necessary and proper to do, taking care that in no case shall any such clerk be paid from any appropriation made for contingent expenses, or for any specific or general purpose, unless such payment is specifically provided for in the law granting the appropriation. 20 Op. 750.

*See also* CIVIL SERVICE, II, e.

**27. Appointment—Clerks.**—The head of a Department has no authority to withdraw his notice to the Civil Service Commission of his revocation of a selection for appointment and appoint the same party previously certified without a further certification from the Commission; and this although through a mis-



understanding a wrong has been done the party originally selected. 20 Op. 64.

**28. Appointment.**—The sole responsibility of every appointment in an Executive Department rests upon the head of that Department, except where otherwise specially provided by statute. 21 Op. 355.

**29. The power of appointment and removal in an Executive Department being discretionary in character, they can not be delegated.** *Ib.*

**30. Sick leave.**—Heads of Departments have no authority, in view of section 5 of the act of March 3, 1893 (27 Stat. 675), to grant to clerks and employees sick leave with pay for more than sixty days in any one calendar year. 20 Op. 670.

*See also* LEAVES OF ABSENCE.

**31. There is no limit to the right of the head of a Department to demand service of his subordinates.** 20 Op. 728.

**32. Opinion of the Attorney-General.**—The head of a Department can not require the Attorney-General's opinion as to his powers to do an act unless it is his intention to be guided thereby. *Ib.*

**33. Heads of Departments are alone authorized under section 3683, Revised Statutes, to give orders for purchases payable from the contingent fund and to approve vouchers therefor.** 18 Op. 424.

*See also* DEPARTMENT OF THE INTERIOR, II, a.

**34. Opinion of July 16, 1886 (18 Op. 424), in regard to the power conferred upon heads of Departments by section 3683, Revised Statutes, respecting purchases payable from the contingent fund, does not apply to the Assistant Secretary of the Interior while in the exercise of authority prescribed for him by the Secretary of the Interior under section 439, Revised Statutes.** 18 Op. 432.

**35. Heads of Departments—Subpoena, appearance, and testimony.**—The head of an Executive Department is not legally bound, in obedience to a subpoena of a court, to appear in a suit between private parties and testify to facts which have come to his knowledge officially; but he may appear and give such testimony as he shall deem proper. 25 Op. 326.

**36. Same.**—The head of an Executive Department may properly decline to furnish official records of his Department, or copies

thereof, or to give testimony in a cause pending in court between private parties, respecting facts which have come to his knowledge officially, whenever in his judgment the production of such papers or the giving of such testimony might prove prejudicial, for any reason, to the Government or to the public interest. *Ib.*

**37. Same.**—The head of an Executive Department may legally prohibit the chief of a bureau from producing in court any official records of the Department, or certified copies thereof, in obedience to a subpoena *duces tecum*, and from making or certifying copies of such official records. *Ib.*

**38. Same.**—The records of Executive Departments are quasi-confidential in their nature, and must be classed as privileged communications whose production can not be compelled by a court without express authority of law. *Ib.*

**39. Ad interim appointments—Ten-day limit.**—Head of a Department.—Under sections 177, 178, 179, and 180, Revised Statutes, the President has power to fill temporarily (by an appointment *ad interim*, as there prescribed) a vacancy occasioned by the death or resignation of the head of a Department, or of the chief of a bureau therein, for a period of ten days only. When the vacancy is thus temporarily filled once for that period, the power conferred by the statute is exhausted. It is not competent to the President to appoint either the same or another officer to thereafter perform the duties of the vacant office for an additional period of ten days. 16 Op. 596.

**40. Same.**—Sections 177, 178, 179, and 180, Revised Statutes, considered with reference to the power of the President to make *ad interim* appointments, and opinion of Attorney-General Devens (16 Op. 596-7) concurred in. 17 Op. 530.

**41. In the case of a vacancy in the office of Secretary of the Treasury, caused by the death of the incumbent: Advised that the duties of the office can not be performed by any other officer, under sections 177, 179, 180, and 181, Revised Statutes, for a longer period than ten days.** 18 Op. 58.

**42. Where there is a vacancy in the head of a Department, it can not be temporarily filled for a longer period than ten days, either by operation of law or by designation of the President (sec. 180, Rev. Stats.).** 20 Op. 8.

43. Same.—The view expressed in 17 Op. 535, that twenty days may be taken to fill such vacancy by allowing the statutory occupation of the office for ten days, followed by a designation by the President for an additional ten days, is not accepted. *Id.*

See 15-18; see also OFFICE AND OFFICERS, 14-22.

*c. Clerks and Employees.*

44. The chief clerk, chiefs of bureaus, and translator in the State Department are all "clerks" within the meaning of section 169, Revised Statutes, and are to be appointed by the Secretary of State. 21 Op. 363.

45. Appointment and removal.—Departmental clerks, messengers, and laborers are to be appointed and removed by the head of the Department, when not otherwise provided by statute. This power, being discretionary in character, can not be delegated, but must be exercised by the Secretary or Acting Secretary. 21 Op. 535.

46. Disposition of clerks among the various Bureaus, etc.—It is competent for a head of a Department to alter the disposition among the various bureaus and offices of his Department of the clerks allowed by law, as he may find it necessary and proper to do, taking care that in no case shall any such clerk be paid from any appropriation made for contingent expenses, or for any specific or general purpose, unless such payment is specifically provided for in the law granting the appropriation. 20 Op. 750.

47. Witness fees.—A Department clerk when subpoenaed to testify on behalf of the United States has no right to witness fees, but his expenses are allowable. When subpoenaed by a private party he may demand and accept witness fees. 21 Op. 263.

48. An employee of an Executive Department absent from his duty while at Omaha, Nebr., at a prize drill, duly ordered thereto by a superior officer of the National Guard, of which he was a member, is entitled to his pay while absent. 20 Op. 437.

See also LEAVES OF ABSENCE.

*d. Prosecution of Claims by.*

49. Section 190, Revised Statutes, prohibiting employees of any of the Executive Departments from prosecuting certain claims against the Government for two years after

the termination of their employment, applies to all claims which were pending in any of the Departments while the employee was in the employ of the Government. 20 Op. 695.

50. That section applies to examiners of the Department of Justice, being persons receiving regular employment who take oath of office and have power to administer oaths to witnesses, although they hold no office known to the statute law, but are employed and paid under a general appropriation for detection of crimes, etc. 20 Op. 696.

See also CIVIL SERVICE, 43, 44.

III. Rules and Regulations.

51. The regulation of commerce and navigation being entirely within the control of Congress, there is no authority for an Executive Department to make or enforce rules or regulations relative to the registry of vessels or kindred matters connected with such subjects. 22 Op. 566.

52. A regulation made in pursuance of an act of Congress has the force of law. 22 Op. 568.

53. Departmental regulations—Construction of.—The question as to whether or not a citizen of Porto Rico, legally a resident of New York, is eligible for appointment in the Marine-Hospital Service under a departmental regulation which requires the applicant to be a citizen of the United States, or, if of foreign birth, to furnish proof of American citizenship, does not involve any question of law within the meaning of section 356, Revised Statutes, and is not, therefore, one properly calling for an opinion of the Attorney-General. The requirement not being demanded by law, its interpretation may properly be left to the department or bureau responsible for its existence and execution. 18 Op. 521; 20 Op. 649; 21 Op. 255, followed. 25 Op. 183.

54. Departmental regulation—Delegation of legislative authority.—The order of the Department of Agriculture of April 26, 1904, prohibiting the importation of hay and straw from continental Europe as a means of preventing the introduction of foot-and-mouth disease among cattle in the United States, is a regulation of commerce with foreign nations and an exercise of legislative power, and therefore void. 25 Op. 249.

55. *Same.*—The act of February 2, 1903 (32 Stat. 791), merely authorizes the Secretary of Agriculture to make such regulations and take such measures as are administrative in their nature for the enforcement of the purposes of that law. *Ib.*

*See also* STATUTORY CONSTRUCTION, 10-24.

#### IV. Contracts.

56. *Advertisements.*—All purchases and contracts for supplies in any of the Departments of the Government must be made by advertisement unless immediate delivery is necessary. 21 Op. 59.

57. *Same.*—The first two sentences of section 3709, Revised Statutes, as amended by the acts of January 27 (28 Stat. 33), and April 21, 1894 (28 Stat. 62), apply to purchases anywhere in the United States. The remaining three sentences apply only to purchases in the city of Washington. *Ib.*

58. *Same.*—The word "miscellaneous," in section 2 of the act of April 21, 1894 (28 Stat. 62), must be restricted to that class of commodities which must be purchased on a considerable scale and used alike by many or all of the various Departments and Government establishments in the city of Washington. *Ib.*

59. *Same.*—It is not necessary under existing law for the Secretary of the Treasury to advertise in six newspapers published in the District of Columbia as provided by the act of January 21, 1881 (21 Stat. 317), for proposals for the interior finish of the post-office building in the city of Washington. 21 Op. 595.

60. *Same.*—The selection of newspapers in which to publish advertisements of this character in the District of Columbia is within the discretion of the head of the Department. *Ib.*

61. *Advertisement for supplies.*—In advertising for supplies for the various Departments of the Government as provided in section 3709, Revised Statutes, as amended by the act of January 27, 1894 (28 Stat. 33), the advertisement may be issued in the name of all the Departments, for supplies common to all, provided the advertisement contains the quantity of supplies required by each Department; but contracts for supplies can only be entered into by the appropriate officer of each Department. 25 Op. 607.

62. *Payment for advertisements.*—Section 853, Revised Statutes, is superseded by the act of June 20, 1878 (20 Stat. 216), as regards the payment for advertisements by the several Departments of the Government. 19 Op. 159.

63. *Bids—Consideration of, after hour appointed.*—There is nothing in the acts of January 27, 1894 (28 Stat. 33), and April 21, 1894 (28 Stat. 58), amending section 3709 of the Revised Statutes, inconsistent with the legal right of the board of award of the Department of Agriculture to consider any bid received by them through the mail after the hour of 2 o'clock p. m. 21 Op. 546.

64. *Same.*—The designation of 2 o'clock p. m. "for the opening of all such proposals in each Department" means only that such proposals shall not be opened before 2 o'clock p. m. *Ib.*

65. *Same.*—A proposal received after that hour, under circumstances which warranted the belief that it had been prepared and submitted in the light of the proposals submitted by other bidders, which had been already opened and made known, should not be received or entertained; but a proposal received under conditions which precluded the possibility of such unfairness should not be rejected because it happens to be received by the board of award a few minutes after 2 o'clock p. m. *Ib.*

For bids and bidders generally, *see* CONTRACTS, *Ib.*

66. *Envelopes.*—Postmaster-General—Contracts for all the Departments.—A question regarding the construction of section 96 of the act of January 12, 1895 (28 Stat. 624), which provides that "The Postmaster-General shall contract for all envelopes, stamped or otherwise, designed for sale to the public or for use by his own or other Departments, is a general question, applicable to all the Departments, and is of sufficient importance to warrant its submission to the Attorney-General for his opinion thereon. 21 Op. 181.

67. *Same.*—Section 96 of the act of January 12, 1895 (28 Stat. 624), does not apply where an exigency requires an immediate delivery of envelopes to a particular Department and the public service might be seriously impaired by the necessity of a requisition upon the Postmaster-General, but it does apply to

those cases in which contracts are to be made by advertisement. *Ib.*

68. **Same.**—Where the public exigency requires the immediate delivery of the envelopes, they may be purchased, under section 3709, Revised Statutes, by the head of the Department in which the exigency arises. *Ib.*

69. **Supplies.**—It is unlawful for an Executive Department to make a contract for supplies for a longer term than one year from the time the contract was made. 21 Op. 304.

70. **Breach of contract.**—Unless authorized by Congress the head of a Department has no power to adjust and pay claims for unliquidated damages, even when arising from the breach of a contract, except where such claims are for work and labor done or materials furnished under a contract silent as to price and the amount thereof unliquidated. 22 Op. 437.

#### V. Expenditures.

71. **Purchases from contingent fund.**—Heads of Departments are alone authorized, under section 3683, Revised Statutes, to give orders for purchases payable from the contingent fund and to approve vouchers therefor. 18 Op. 424.

72. **Same.**—Opinion of July 16, 1886 (18 Op. 424), in regard to the power conferred upon heads of Departments by section 3683, Revised Statutes, respecting purchases payable from the contingent fund, does not apply to the Assistant Secretary of the Interior while in the exercise of authority prescribed for him by the Secretary of the Interior under section 439, Revised Statutes. 18 Op. 432.

73. **Continuing employment of contractors after appropriation is exhausted.**—Executive officers are prohibited by sections 3679, 3732, 3733, and 5503, Revised Statutes, from continuing the employment of the contractors and involving the Government in expenditures or liabilities beyond those contemplated by Congress, or authorized by law. 21 Op. 244.

#### VI. Departmental Practice and Construction.

74. **Matters passed upon and finally disposed of.**—No rule of administrative practice is better settled than that when a matter has once been passed upon and finally disposed

of by the head of a Department, it should not be disturbed or reopened by his successors, excepting under extraordinary circumstances, such as the discovery of new facts, and the like. 17 Op. 315.

75. **Same.**—The fact that an application for reexamination of a matter disposed of had been made to and had not been acted upon by the head of the Department by whom the decision was rendered does not withdraw the case from the operation of the rule. *Ib.*

76. **When the meaning of a statute is clear** it can not be affected by departmental practice. 20 Op. 592.

77. **Departmental practice.**—In case of ambiguity in a statute, departmental practice may affect its construction, when long continued, uniform, and familiar, but not when merely recent and occasional. 20 Op. 746.

78. **A practice of twenty years** can not be lightly overturned, and when there is grave doubt as to the proper construction of a statute, the departmental practice is controlling. 20 Op. 358.

79. **Long settled construction.**—When Congress adopts substantially the language of a previous statute, whether from the statute book of the United States or from that of any State, it is presumed to adopt therewith the judicial construction already placed upon the language of the act. The same principle applies in lesser degree to long settled departmental construction. 20 Op. 719.

80. **Uniform departmental practice** should receive great, if not controlling, weight in statutory construction, especially where the statutory language was not modified when incorporated in the Revised Statutes. 21 Op. 349.

81. **When an act of Congress has received for ten years a uniform departmental construction, which was known to Congress, and a subsequent act in *pari materia* is enacted, without change of language, there is a presumption of considerable force that the new language is intended to receive the same construction as the old.** 21 Op. 338.

82. **The principle of *res adjudicata* applies to departmental action of a final nature.** 20 Op. 280.

83. **When departmental practice is not uniform it affords no guide to the construction of the law.** 21 Op. 363.

84. The Attorney-General declined to pass upon the original merits of a doubtful question, where the departmental practice had been in accordance with a decision of the Board of General Appraisers. Such practice should not be changed without a decision of the court. 20 Op. 730.

#### VII. Official Mail.

85. Free registration of official mail.—The second proviso of the third section of the act of July 5, 1884 (23 Stat. 158), which authorizes the registering without the payment of a registry fee of any official letter or packet, by either of the "Executive Departments, or Bureaus thereof," embraces a department officer who, in the course of public business, is called temporarily to discharge his official duties at some place away from the seat of government; but such words do not embrace examiners, special agents, inspectors, etc., of the various Departments who are located at points outside of Washington or are traveling throughout the country. 23 Op. 316.

*See also* POSTAL SERVICE, VI and VII.

#### EXECUTORS AND ADMINISTRATORS.

A legacy or distributive share, in contemplation of law, does not pass to an executor or administrator, but passes through them to such person as is entitled. 22 Op. 298.

*See also* CUBA, 24.

#### EXEMPTIONS.

*See* CUSTOMS LAW, IV, c.

#### EXHORTO.

*See* LETTERS ROGATORY.

#### EXPORT BILLS OF LADING.

*See* INTERNAL REVENUE, 77.

#### EXPORTATION.

*See* CUSTOMS LAW, III, 1.

#### EXPORTATION BOND.

*See* INTERNAL REVENUE, 151-154.

#### EXPOSITIONS AND FAIRS.

- I. World's Columbian Exposition, 1-29.
- II. Inventions International Exposition, 30.
- III. Paris Exposition of 1900, 31-32.
- IV. Tennessee Centennial Exposition, 33.
- V. World's Industrial and Cotton Centennial Exposition, 34.

#### I. World's Columbian Exposition.

1. Congress has power to impose new conditions upon the World's Columbian Exposition, not named in the act of August 5, 1892 (27 Stat. 389), unless said exposition furnish adequate security for the return and payment of the \$570,880 appropriated by the act of March 3, 1893 (27 Stat. 586), and set apart for the expenses of the bureau of awards. 20 Op. 566.

2. Same.—In case the exposition fails to furnish such security, it will be the duty of the Secretary of the Treasury to retain a like amount from the appropriations under the act of August 5, 1892, but not the whole of the unexpended balance of that appropriation. *Ib.*

3. Same.—The Secretary of the Treasury can pay out the sum of \$570,880, or any part thereof, for the purposes named in that portion of the act of 1893 (27 Stat. 586) above referred to. *Ib.*

4. Same.—Even if the exposition should furnish the security and receive the amount of the above appropriation it could not assume the entire cost of the bureau of awards and thereby relieve itself of the indemnity which it is required to file. *Ib.*

5. Same.—The act of March 3, 1893, is an appropriation of a specific amount of money,

devoted to certain purposes, and to be delivered to the World's Columbian Exposition under the conditions named in the act. *Ib.*

6. **Same.**—The expenses of the bureau of awards are to be paid out of the \$570,880 appropriated in the act of March 3, 1893, and not out of the \$2,500,000 provided by the act of August 5, 1892; of which last named sum an amount equal to the \$570,880 is to be retained in the Treasury in case of default as to security by the World's Columbian Exposition. *Ib.*

7. The appropriation of the sundry civil act of March 3, 1893 (27 Stat. 586), providing \$93,190 for the use of the lady managers of the World's Columbian Exposition, is not in subjection to the proviso in the act of August 5, 1892 (27 Stat. 363), that all expenses of administration and installation in the Woman's Building shall be paid by the exposition. 20 Op. 594.

8. **Commissioners.**—Alaska is a Territory within the meaning of sections 2 and 3 of the act of April 25, 1890 (26 Stat. 62), and, as such, is entitled thereunder to be represented by two commissioners in the World's Columbian Commission. 19 Op. 700.

9. The President is authorized under the act of April 25, 1890 (26 Stat. 62), to appoint commissioners of the World's Columbian Exposition from such Territories only as are organized and have a political status under the acts of Congress. The Indian Territory is not such a Territory. 20 Op. 452.

10. The commissioner from New Mexico to the World's Fair of 1893, appointed under the act of April 25, 1890 (26 Stat. 62), may be removed by the concurrent action of the Governor and the President, although the statutes contain no express provisions therefor. The appointment of a successor to fill the vacancy thus created was legally made. 20 Op. 641.

11. Appropriations contained in the act of August 5, 1892 (27 Stat. 389), for the World's Fair, are still available notwithstanding the fact that the fair is open on Sundays. 20 Op. 623.

12. The branch post-office at the World's Fair of 1893 must be closed on Sunday. Act of April 25, 1890 (26 Stat. 62), section 4 of the act of July 13, 1892 (27 Stat. 148), and the provision in the act of August 5, 1892 (27 Stat. 363), relating to Sundays considered in connection therewith. 20 Op. 598.

13. The detail of an officer of the Army to report to the president of the World's Columbian Commission, with a view to his assignment by the latter to the duties of an engineer in the preparation and construction of buildings, grounds, etc., for the Columbian Exposition, is within the prohibition of section 1224, Revised Statutes, provided that the performance of such duties require the officer to be separated from his company, regiment, or corps, or interfere with the discharge of his military duties. 19 Op. 600.

14. **Same.**—Where a leave of absence is asked by an army officer for the very purpose of enabling him to undertake the employments prohibited by said section, the granting of such leave would be an evasion of the statute and be unwarranted. *Ib.*

15. The Secretary of the Navy has authority to detail men from the Marine Corps to guard and protect property of the Government placed on exhibition at the World's Columbian Exposition. 20 Op. 576.

16. **Same.**—The cost of transportation and sustenance of such detail must be paid from the fund provided for the Marine Corps and its subsistence, and is only limited by the consideration of the question whether there are sufficient funds available for that purpose, as to which the Secretary of the Navy is the sole judge. *Ib.*

17. The Navy Department is authorized to pay for the actual subsistence of the enlisted men of the Navy employed in taking care of and preserving the stores and other Government property placed on exhibition at the World's Columbian Exposition under the supervision of the Navy Department and in pursuance of law. 20 Op. 577.

18. **Same.**—The expenses necessarily accruing out of the transportation and subsistence of the marines detailed for that purpose may be paid from the fund provided for the Marine Corps and its subsistence. *Ib.*

19. Clerks, storekeepers, and other persons coming to this country for the sole purpose of aiding the exhibitor to take part in the exposition are outside of and not subject to contract-labor laws of the United States. 20 Op. 151.

20. Skilled employees of foreign exhibitors at the World's Columbian Exposition, who come in good faith for the purpose of setting up and operating the machinery of such

exhibitors, are outside of and not subject to the contract-labor laws of the United States. 20 Op. 89.

21. The power given the President by section 16 of the act of April 25, 1890 (26 Stat. 64), to "designate additional articles for exhibition," is not limited to articles belonging to the Executive Departments and institutions therein mentioned, but extends to such other articles as he may deem fit and proper to be designated; and this power carries with it authority to employ such persons as shall be necessary to properly prepare and care for the articles which may be thus designated. 19 Op. 703.

22. The question of drawbacks upon exhibits of foreign governments at the World's Fair of 1893, is governed by section 11 of the act of April 25, 1890 (26 Stat. 64). 21 Op. 36.

23. The receipt and distribution of medals and diplomas awarded by the World's Columbian Commission at Chicago in 1893 are purely ministerial acts. They could therefore be delegated by the Commission, and they were delegated, so that delivery can be made either to its executive committee or to the board of reference and control. 21 Op. 216.

24. Same.—The Secretary of the Treasury has no power to make distribution to the exhibitors directly. *Ib.*

25. So much of section 3 of the act of August 5, 1892 (27 Stat. 389), as provides for the duplication of medals awarded at the World's Fair at the mints of the United States was repealed by the act of March 3, 1893 (27 Stat. 587). 21 Op. 253.

26. The law authorizing the Secretary of the Treasury to furnish electrotypes and photographs of the medals of award to exhibitors at the World's Fair to whom medals have been awarded, and to newspapers and periodicals for publication, carries with it the authority to those to whom such electrotypes and photographs may be furnished to have prints made therefrom without further or more specific authority. 21 Op. 330.

27. Same.—The exhibitors, printers, or publishers have not the right to insert the name of the exhibitor in the blank space which will be used for that purpose on the medal. *Ib.*

28. Same.—After the exhibitors shall have received the medals and diplomas awarded them, the Treasury Department has no fur-

ther authority over them, and is not authorized to say what use shall or shall not be made of them, or to restrict the making or using of facsimiles of them by exhibitors to whom they have been awarded, beyond what is prescribed by the express provisions of the statutes referred to in this opinion. *Ib.*

29. The Secretary of the Treasury is authorized to make payment to Mrs. Susan Gale Cooke out of the fund appropriated by the act of March 3, 1891 (26 Stat. 965), for the use of the Board of Lady Managers of the World's Columbian Exposition, for her services as secretary *pro tempore* of that board. 20 Op. 237.

*See also* LOTTERY.

## II. Inventions International Exposition.

30. The President can not appoint an honorary commissioner to the "Inventions International Exposition" at London, such office not existing by virtue of any law of the United States. 18 Op. 171.

## III. Paris Exposition of 1900.

31. The commissioner-general of the United States to the Paris Exposition of 1900 has no authority to let a contract for the printing and publication of a catalogue of the United States exhibit, etc., in which the contractor is to receive no money from the United States, but is to derive his compensation therefor from the proceeds of the sale of the catalogue and the insertion of advertisements therein. 22 Op. 388.

32. Same.—Any money that might be derived by the commissioner-general through the granting of concessions, or the sale of a catalogue, belongs to the United States and should be turned into the Treasury. *Ib.*

## IV. Tennessee Centennial Exposition.

33. The Secretary of the Treasury has authority to limit the number of Chinese to be admitted to the United States as participants in the Tennessee Centennial Exposition. 21 Op. 517.

### V. World's Industrial and Cotton Centennial Exposition.

34. The appropriation made by the act of March 3, 1885 (23 Stat. 512), in aid of the World's Industrial and Cotton Centennial Exposition, held in New Orleans, La., is not applicable to any objects other than those specifically enumerated in the act. 18 Op. 146.

Reaffirmed, 18 Op. 153.

### EXTRA COMPENSATION OR PAY.

See OFFICE, VII; UNITED STATES ATTORNEYS; UNITED STATES MARSHALS; UNITED STATES, II; ARMY, I, c; II, d, (2); IV.

### EXTRADITION.

1. The Secretary of State has power under section 5272, Revised Statutes, to review the proceedings in an extradition case certified to him, and this power extends to the review of every question therein presented. 17 Op. 184.

2. Translation of papers containing charges.—In an application by the Government of Mexico to a United States commissioner for the extradition of a fugitive under the treaty of December 11, 1861 (12 Stat. 1200), with that country, the commissioner should decline to proceed with the inquiry until a translation of the papers containing the charges are produced before him; but in such a case he should so advise that Government and make a liberal allowance of time for the production of such translation before returning the papers. 21 Op. 428.

3. Same.—While the treaty does not in terms provide for such translation, yet the proceedings thereunder must accord with the rules and forms of the tribunals of that jurisdiction to which recourse is had; and inasmuch as the commissioner is the sole judge of the weight and sufficiency of the evidence upon which extradition is sought, it follows that such evidence must be presented in a language that is intelligible to him. *Ib.*

4. From Canada — Rearrest and trial on another charge.—Under article 3 of the treaty of extradition of 1890 (26 Stat. 1509) between

the United States and Great Britain a person who, under the provisions of that treaty, is extradited for an offense and upon trial is acquitted can not be again arrested and tried upon some other charge until he first shall have had an opportunity of returning to the country from which he was surrendered. 23 Op. 431.

5. Same—Obligatory upon prisoner to invoke treaty provisions.—Underwood, an American citizen, having been extradited from Canada in 1897 on a charge of murder committed in Texas, was tried and acquitted and immediately rearrested on two charges of robbery committed prior to his extradition, was tried, found guilty, and sentenced to sixteen years' imprisonment in the penitentiary of Texas. Upon demand of the British Government for his release, *Held* that the prisoner, being an American citizen, and having taken no legal steps to invoke the provisions of that treaty, no international obligation exists on the part of the United States to secure, on demand of the British Government, the release of Underwood, regardless of any action which he might take on his own behalf to secure his release on habeas corpus. *Ib.*

6. Same—Duty of the Executive.—The question involved is a legal one and respects the legal rights of the prisoner under the extradition treaty; his remedy, therefore, is a legal one; and, under the circumstances of this case, there are no steps which may appropriately be taken by the Executive in order to fulfil the obligations of that treaty. *Ib.*

7. From Mexico—Rearrest and trial on another charge.—Acosta, having been returned from Mexico to the State of Florida under extradition proceedings, to be punished for a crime committed within that State, was convicted and sentenced to imprisonment. Upon his release he was arrested for another crime without having an opportunity of returning to Mexico. Demand having been made upon the State Department by the Mexican Government for his release, and it not appearing that the prisoner has made an attempt to invoke his right to return to Mexico: *Held*, that any action by the Department of State at this time to secure his release would be premature. 23 Op. 604.

8. Same.—The primary resort of the defendant is to the courts. He may either apply to the Federal courts for a writ of



habeas corpus, or interpose the alleged irregularity of his arrest as a matter of defense on the trial of his case in the State court. *Ib.*

9. **Same—Authority of the Federal Government.**—The question whether, in case any rights the prisoner may possess are denied in the State courts, the Federal Government is powerless or free from obligation to interfere in that which may then be a matter of international obligation, is not decided. *Ib.*

10. **Personal effects taken from prisoner at time of his arrest—Surrender of.**—Under the usages which govern extraditions, property found upon the person of a criminal at the time of his arrest, if obtained by the commission of the criminal act of which he is charged, or if material as evidence to prove such act, is generally surrendered with the person at the time of the extradition. 23 Op. 535.

11. **Same.**—The money taken from the person of C. W. F. Neely at the time of his arrest in this country for offenses committed in Cuba, not having been turned over to the authorities of that island at the time of his extradition, may be delivered to the Secretary of War and by him to the military governor of Cuba, with the understanding that it is to be retained by the latter pending a judicial determination of its true ownership. *Ib.*

12. **Same.**—If the request of the court of instruction of Havana for this money is to be understood as an assertion of title to it, it can not safely be surrendered in the absence of a formal adjudication in a civil proceeding to which Neely was a party, and as to which he had his day in court. *Ib.*

13. **Deserters from German vessels.**—The question as to whether deserters or alleged deserters from German ships of war or merchant vessels must, under article 14 of the consular convention of 1871 between the United States and Germany (17 Stat. 929), be given up without the examination authorized by section 5280, Revised Statutes, upon the written request of a German consul, and the filing of certain papers named in that article, should be submitted to the proper court for a judicial determination. 25 Op. 77.

#### FALSE LABELING.

See FOOD PRODUCTS.

#### "FAVORITE" (Vessel).

See CLAIMS, II, 80.

#### FEES.

See UNITED STATES ATTORNEYS; UNITED STATES MARSHALS, 4; SHIPPING, III, 78-79; CUSTOMS LAW, III, 64, and VI, 382; COURTMARTIAL, 21, 22; DIPLOMATIC AND CONSULAR OFFICERS, 19-25; PENSIONS, 16-18; REVENUE MARINE, 21; SHIPPING COMMISSIONERS, 2, 3.

#### FERRYBOATS.

See STEAMBOAT-INSPECTION SERVICE, 4, 6, 7.

#### FINES, PENALTIES, AND FORFEITURES.

1. There is a clear distinction between the compromise of a doubtful case and the remission of a penalty, forfeiture, or disability. The former is strictly a fiscal one, while the latter is in the nature of a pardoning power. 21 Op. 264.

2. **Mitigation before trial—Timber depredation.**—The Secretary of the Navy has power under section 4751, Revised Statutes, to mitigate, before trial and conviction of the offender, any fine, penalty, or forfeiture incurred under the provisions of the statutes therein referred to, which relate to timber depredations. 17 Op. 282.

3. **Same.**—Where proceedings are already commenced, it is the duty of the prosecuting officer, upon receipt of the order of mitigation, and on the terms and conditions thereof being complied with, to carry it into effect by discontinuing the proceedings. *Ib.*

4. **Same.**—The word "incurred" as employed in section 4751, Revised Statutes, denotes a condition of liability to the penalty and forfeiture; the meaning of the clause "all penalties and forfeitures incurred" being the same as if it read "all penalties and forfeitures to which any person has become liable under the provisions," etc. The penalty or forfeiture is "incurred" in the sense in which that word is used in the first

clause of that section before any proceedings for the recovery thereof have been commenced. *Ib.* (283, 284.)

5. **Masters of vessels** become liable to a fine of \$5 for each passenger, other than a cabin passenger, carried in violation of section 2 of the act of August 2, 1882 (22 Stat. 189), which provides that there shall not be in any compartment or space on a vessel occupied by "such passengers" (immigrant passengers) more than two tiers of berths, nor more than one person in a berth not double. 22 Op. 499.

6. **Refund—Protest.**—Section 26 of the shipping act of June 26, 1884 (23 Stat. 59), does not require that a protest shall have accompanied the payment of a fine, etc., a refunding of which by the Secretary of the Treasury is asked. 18 Op. 63.

7. **Section 5294, Revised Statutes**, as amended by the act of December 15, 1894 (28 Stat. 595), applies to fines and penalties only, and does not authorize the Secretary of the Treasury to remit a forfeiture. 21 Op. 291.

8. **Counterfeit coin—Return of bullion therein contained.**—Section 4 of the act of February 10, 1891 (26 Stat. 742), which authorizes the Secretary of the Treasury to seize and forfeit all counterfeits of the coin of the United States, does not authorize the Secretary to return to the person from whom such coin was taken the counterfeit or the value of the bullion it contained. 23 Op. 458.

9. **Same—Duty of Treasury Department.**—Under that section the Treasury Department has authority to seize counterfeit coin, to decide that it is counterfeit, to determine that it was unlawfully in possession of the party from whom taken, and to forfeit it; and after forfeiture to direct in what manner it shall be disposed of. No judicial condemnation is necessary. *Ib.*

10. **Same—Due process of law.**—Such seizure and forfeiture is not a taking of property without due process of law within the meaning of the Fifth Amendment to the Constitution. Counterfeit coin is neither property nor the subject of property; it is the product of a felonious act, and outside the law. *Ib.*

11. **Same.**—The due process of law required by that amendment was never designed to apply to such rights as a person unlawfully in possession of counterfeit coin may have in it, but was intended for the

protection of substantial rights in lawful property. *Ib.*

12. **Remission—Prize of war—The President's authority.**—The President has authority to grant remission of forfeiture in cases of prizes of war after the vessels have been condemned, but before the prize money has been deposited in the Treasury of the United States. 23 Op. 360.

13. **Same—His jurisdiction.**—His jurisdiction in these matters rests upon his pardoning power, as defined in section 2, Article II, of the Constitution. *Ib.*

14. **Same.**—Congress can not abridge, modify, or condition the exercise of this power. It is coextensive with the punishing power and extends to cases of penalties and forfeitures, with a limitation that a fine or penalty may not be remitted if the money has been paid into the Treasury. *Ib.*

15. **Regulations for the forfeiture or destruction of imported prohibited articles** may be so framed as to provide due process of law. 22 Op. 29.

16. The violation of the provisions of a statute that subject a person to a penalty, whether a forfeiture or otherwise, must be something more than an accidental or unwitting violation. 22 Op. 390.

17. When property is of trifling value, and its destruction is necessary to effect the object of a valid law, it is within the power of the legislature to order its summary destruction without obtaining a forfeiture by judicial proceedings. 22 Op. 70.

See CUSTOMS LAW, IX; TREASURY DEPARTMENT, 34-43, 182-184; SHIPPING, III, a; INTERNAL REVENUE, IV, 138-143; DEPARTMENT OF COMMERCE AND LABOR, II, 17-19; SEAL FISHERIES, 1-3.

## FIREARMS.

The United States, having first appropriated the device of an eagle, with the letters U. S. under it, for the purpose of marking firearms manufactured by the Government, may prevent any private manufacturer using the same device on firearms manufactured by him, and thus falsely representing to the world that his firearms were made by the United States. 19 Op. 361.

**FISH COMMISSION.**

**Employee holding office as village constable.**—In the case of an employee of the United States Fish Commission, not in the service by *appointment*, who holds the office of village constable: *Advised* that he may properly exercise the functions of the latter office, provided this does not interfere with the regular and efficient discharge of his employment under the Government. 18 Op. 3.

**FISHERIES.**

1. **The regulation of fisheries in navigable waters within the territorial limits of the several States**, in the absence of Federal treaty, is a subject of State rather than of Federal jurisdiction. 22 Op. 214.

2. **Right to take fish from Lake Champlain.**—The waters of Lake Champlain, within the limits of the United States, being partly in New York and partly in Vermont, the right to take fish therefrom depends solely upon the laws of the one or of the other of those States, according as the *locus* is within the boundaries of the one or of the other. The General Government can afford no relief. 17 Op. 74.

*See also* SEAL FISHERIES.

**FLOOD TIDE.**

*See* NAVIGABLE WATERS, 69.

**FLOYD COUNTY, GA., BONDS.**

The proposed issue of interest-bearing bonds by the county commissioners of Floyd County, Ga., will not be in conflict with the banking laws of the United States. 21 Op. 70.

**FON DU LAC INDIAN RESERVATION.**

**TITLE TO TIMBER CUT THEREON.** *See* INDIANS, 120-123.

**FOOD PRODUCTS.**

1. **False labeling—Act applies to articles imported from foreign countries.**—The act of July 1, 1902 (32 Stat. 632), prohibiting the introduction into any State or Territory of any dairy or food product which shall have been falsely labeled or branded as to the State or Territory where grown, applies not only to domestic articles, but also to those imported from foreign countries which are labeled as being of domestic origin. 24 Op. 675.

2. **Same.**—The Department of Agriculture and the Treasury Department have no jurisdiction or power under the act of March 3, 1903 (32 Stat. 1157), to prevent or punish the false labeling or branding of dairy or food products after they have passed the custom-house and are delivered to the owner or consignee. *Ib.*

3. **"Birkenwald's Daisy Sugar Corn."**—The use of the words "Birkenwald's Daisy Sugar Corn, S. Birkenwald Co., Milwaukee, Wis.," by that company on canned goods produced in another State, is a violation of section 1 of the act of July 1, 1902 (32 Stat. 632), which prohibits the false labeling or branding of dairy or food products. These words clearly imply that the goods referred to were manufactured or prepared in Wisconsin. 24 Op. 697.

4. **Rule of interpretation.**—Wherever the natural inference to be drawn from the form or words of a brand or label is contrary to the fact as to the State or Territory in which the article referred to is made, produced, or grown the case would seem to be within the letter and spirit of the above-named act. *Ib.*

5. **Omission of place of manufacture—Name of wholesale dealer.**—The act of July 1, 1902 (32 Stat. 632), which prohibits the false labeling or branding of dairy and food products which enter into interstate commerce, does not provide that such products shall be labeled or branded so as to show the State or Territory in which they are produced. It provides merely that such products shall not be falsely labeled or branded as to the State or Territory in which they are made, produced, or grown. The mere omission, in the instances given, of the place of manufacture can not be said to be in violation of that law; nor is the name of the wholesale dealer on

the label or brand necessarily a representation that he is the manufacturer or producer. 24 Op. 125.

6. **Imported food products—False labeling.**—Food products produced, manufactured, or put up at Marseille, France, but which are labeled “Bordeaux,” are falsely labeled within the meaning of that provision of the act of March 3, 1903 (32 Stat. 1158), which forbids the importation of food products “falsely labeled in any respect in regard to the place of manufacture,” and are therefore not entitled to admission into the United States. 25 Op. 142.

7. **Same.**—The words “place of manufacture,” as used in that act, do not mean merely the “country of production,” but refer to the particular locality or district in which the goods are produced or manufactured. *Ib.*

8. **Importations of meats from Germany.**—The Secretary of Agriculture is not authorized under the act of March 3, 1903 (32 Stat. 1157), to request the Secretary of the Treasury to refuse admission into the United States of certain meats and meat preparations coming from Germany, because of the action of the German Government in prohibiting the importation of similar goods into that country. 25 Op. 62.

9. **Importation of canned and chopped meats.**—The provision in the act of April 23, 1904 (33 Stat. 288), authorizing the Secretary of the Treasury to refuse delivery to the consignee of any goods which the Secretary of Agriculture finds “are forbidden entry or to be sold, or are restricted in sale in the countries in which they are made or from which they are exported,” is not retaliatory in its nature, and does not empower the Secretary of the Treasury to exclude meats brought from countries that refuse entry to, or restrict the sale of, similar meats from the United States. 25 Op. 244.

10. **Oleomargarine.**—The various simple and compound substances mentioned in section 2 of the act of August 2, 1886 (24 Stat. 209), known as oleomargarine, must be “made in imitation or semblance of butter, or, when so made, calculated or intended to be sold as butter or for butter,” before any of them can be regarded as taxable under that act. 18 Op. 489.

#### FOOT-AND-MOUTH DISEASE.

*See* EXECUTIVE DEPARTMENTS, 54.

#### FORAKER ACT.

(Act of Apr. 12, 1900, 31 Stat. 77. *See* 24 Op. 55.)

#### FORAGE.

*See* ARMY, 187, 188.

#### FOREIGN-BUILT VESSELS.

REGISTRY. *See* SHIPPING, I, c.

FEES. *See* SHIPPING, III, e.

#### FOREIGN CABLES.

*See* CABLES.

#### FOREIGN COIN.

*See* CUSTOMS LAW, 180.

#### FOREIGN CONSUL.

*See* DIPLOMATIC AND CONSULAR OFFICERS, 34.

#### FOREIGN JUDGMENTS.

1. **Enforcement of.**—The adoption by this Government of certain propositions relating to the enforcement of judgments of foreign tribunals in civil and commercial matters, suggested by a resolution adopted at the conference held at Milan in 1883 by the Association for the Reformation and Codification of International Law, would not lead to any improvement in the existing state of our law

in respect to the enforcement of such judgments. 18 Op. 84.

2. *Same.*—According to the general current of American authority, the judgment of a foreign tribunal having jurisdiction of the parties and of the subject-matter of the controversy, where no fraud is shown, is recognized by the courts of this country as creating an obligation upon which an action can be maintained, and where an action is brought to enforce the obligation thus created such judgment is taken to be conclusive upon the merits. *Ib.*

3. *Same.*—Among the several States of this Union the same doctrine applies to judgments rendered by the courts of sister States, so that these judgments practically stand on no higher or different footing than the judgments of foreign courts. *Ib.*

4. *Same.*—The prevailing doctrine, both as regards State judgments and judgments of foreign countries, is believed to be as liberal as the interests of justice require. *Ib.*

5. *Same.*—Under the law as it now exists it is a good defense to such an action that the judgment was obtained by the fraud of the party seeking to enforce it; and, moreover, no court will lend its aid to enforce a judgment opposed to good morals or to the public law of the State. *Ib.*

6. *Same.*—The mode of enforcing a foreign judgment (and the same mode exists among the several States of the Union with respect to the judgments of other States) is by the institution of a suit thereon; and a judgment obtained in the suit thus instituted has the same vigor and effect as other domestic judgments, and is executed in the same way. The foreign judgment has no effect of itself, other than to create an obligation upon which an action may be brought, or to constitute an *exceptio rei judicatæ* available in defense of an action. *Ib.*

#### FOREIGN LAWS.

1. The laws of a foreign country are not known to the Attorney-General, but are facts to be proved by competent evidence. 21 Op. 80.

2. The existence of a foreign law is a question of fact. 21 Op. 377.

#### FOREIGN-MADE BAGS.

*See* CUSTOMS LAW, 198, 199.

#### FOREIGN MAIL SERVICE.

*See* OCEAN MAIL SERVICE; TREATIES AND CONVENTIONS, IV, 65-73.

#### FOREIGN POSTAGE STAMPS.

*See* COUNTERFEITING.

#### FOREIGN REPRESENTATIVES.

*See* DIPLOMATIC AND CONSULAR OFFICERS, III; HUNTING.

#### FOREIGN VESSELS.

REGISTRY. *See* SHIPPING, I, c.

MASTERS of. *See* SHIPPING, II.

FEES. *See* SHIPPING, III, e.

PENAL TAX—TRANSPORTATION OF PASSENGERS, ETC. *See* SHIPPING, III, a.

#### FOREIGN TRADE-MARK.

*See* TRADE-MARKS.

#### FOREIGNER.

*See* WORDS AND PHRASES.

#### FOREST RESERVES.

*See* RESERVATIONS AND PARKS, IV; PUBLIC LANDS, VII, 26-30.

#### FORFEITURES.

*See* CUSTOMS LAW, IX, c; FINES, PENALTIES, AND FORFEITURES; GUAM, 4; RECOGNIZANCE; PUBLIC LANDS, VIII.

**FORMER ACQUITTAL.**

*See* CUSTOMS LAW, 403, 404.

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**FORT BRADY.**

*See* RESERVATIONS AND PARKS, II.

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**FORT BROWN MILITARY RESERVATION.**

*See* RESERVATIONS AND PARKS, II.

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**FORT KEOGH RESERVATION.**

*See* RESERVATIONS AND PARKS, II.

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**FORT MISSOULA MILITARY RESERVATION.**

*See* RESERVATIONS AND PARKS, II.

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**FORT SELDON, N. MEX.**

*See* RESERVATIONS AND PARKS, II.

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**FORT SILL MILITARY RESERVATION.**

*See* RESERVATIONS AND PARKS, II.

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**FORT TAYLOR, FLA.**

1. The United States can hold possession of the sites of the advanced martello towers, outworks of Fort Taylor, Fla., which were erected during the rebellion, and exclude all intruders therefrom, whether they claim to be owners or not, and no proceedings to oust the United States from such possession are maintainable. 17 Op. 6.

But, see *United States v. Lee* (106 U. S. 196).

2. *Advised*, that if the title to such land has not been acquired by the Government, but is held by individuals, and it is deemed expedient to permanently retain possession thereof

for military purposes, application be made to Congress by the War Department for authority to acquire the same, instead of forcing the owners to go there for relief. *Ib.*

3. *Same.*—17 Opinions 6, concurred in, except in so far as that opinion held that proceedings to oust the United States from possession of the premises were not maintainable. Such proceedings, while not maintainable directly against the United States, may yet be maintained against the individuals in possession of the premises. 21 Op. 383.

4. *Same.*—The United States had authority to take possession of and use real estate during the period of the war for war purposes, but had not the authority to divest the title of the owner. They had not the power to retain possession of real estate originally taken for war purposes beyond the period during which the occasion for the taking continued. *Ib.*

5. *Same.*—The United States having taken possession and still retaining same, such possession can not be surrendered by the officers of the Government without authority from the Secretary of War. *Ib.*

6. *Same.*—If the United States, being in possession of such real estate, have been forcibly ejected—even by the lawful owner—such possession is unlawful and should be restored to the United States by a possessory action in the courts. *Ib.*

7. *Same.*—If the United States have abandoned such real estate and the lawful owner has entered and taken possession, his possession is lawful and should not be disturbed. *Ib.*

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**FORTIFICATIONS.**

*See* ARMAMENT AND FORTIFICATIONS.

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**FRANCE.**

*See* CRIMES AND CRIMINALS, 4; CUSTOMS LAW, 475.

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**FRANCHISES.**

*See* CONCESSIONS; CUBA, 35–36; PORTO RICO, 31–33; PHILIPPINE ISLANDS, 29–39; NAVIGABLE WATERS, III, a, 119.

**FRANKING PRIVILEGE.**

*See* POSTAL SERVICE, VI.

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**FRAUD.**

A fraud committed by one member of a partnership in a transaction which he is conducting on behalf of the firm is regarded as a fraud of the firm, whether successful or unsuccessful, and although it was the purpose of the partner to cheat his own firm as well as the other party. 21 Op. 90.

*See also* CLAIMS, 98; UNITED STATES, 52.

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**FRAUD ORDERS.**

*See* LOTTERY; POSTAL SERVICE, 13-15.

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**FRAUDULENT VOUCHER.**

*See* INDIAN AGENTS, 7, 8.

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**FREE DELIVERY SERVICE.**

*See* CIVIL SERVICE, III, g, 99-101; POSTAL SERVICE, III, d, 104-109.

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**FREE LIST.**

*See* CUSTOMS LAW, IV, c.

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**FREE REGISTRATION.**

OFFICIAL MAIL. *See* POSTAL SERVICE, VII.

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**FREEDMEN'S HOSPITAL.**

*See* DISTRICT OF COLUMBIA, IV.

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**FREIGHT.**

CLAIMS FOR BY BOND-AIDED RAILROADS. *See* RAILROADS, II.

FREIGHT RATES. *See* INTERSTATE COMMERCE.

**FRENCH SPOILIATION CLAIMS.**

*See* CLAIMS, I, d.

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**FUR SEALS.**

*See* SÉAL FISHERIES; CUSTOMS LAW, IX, d.

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**FURLONGS.**

*See* DEPARTMENT OF AGRICULTURE, 6.7,

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**GALENA, ILL.**

*See* SURVEYOR OF CUSTOMS.

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**GALVESTON HARBOR.**

*See* NAVIGABLE WATERS, II, c.

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**GAMBLING.**

*See* LOTTERY.

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**GAME.**

Importation of bodies of game animals.—The expression "That all dead bodies, or parts thereof, of any foreign game animals, or game or song birds, the importation of which is prohibited," etc., found in section 5 of the act of May 25, 1900 (31 Stat. 187), refers to the animals and birds whose importation, if living, is prohibited by section 2 of said act, and does not prohibit the importation of "all dead bodies of any foreign game animals," etc. 23 Op. 213.

*See also* HUNTING.

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**GARLAND COUNTY, ARK.**

GRANT OF LAND TO, FOR PUBLIC BUILDING. *See* PUBLIC LANDS, VIII.

**GENERAL APPRAISERS.**

*See* CUSTOMS LAW, X.

**GENERAL ARBITRATION BOARD.**

(Provided for by treaty of The Hague.)

1. **Members of—Appointment.**—The members of the general arbitration board provided for by the treaty of The Hague, who are to be appointed by the President, are not officers of the United States whose appointments require confirmation by the Senate. 23 Op. 313.

2. **Same—Are not “persons holding office.”**—Nor are they, in the ordinary acceptance of the term, persons holding office. Their work is not only occasional, but contingent upon an appointment by foreign powers to act as arbitrators in the settlement of disputes between the nations so appointing them. *Ib.*

**“GENERAL ARMSTRONG” (THE.)**

*See* CLAIMS, I, b, 13–28.

**GENERAL ORDERS.**

*See* ARMY, 238.

**GENERAL SERVICE MESSENGERS.**

*See* ARMY, I, c, 26.

**GEOLOGICAL SURVEY.**

*See* DEPARTMENT OF THE INTERIOR, III, f.

**GERMAN LETTERS ROGATORY.**

*See* LETTERS ROGATORY.

**GERMANY.**

As to whether a discriminating duty should be imposed under the act of 1894 upon salt

imported from Germany, which country imposes a duty in the nature of an internal excise tax on salt exported from the United States. *Quære.* 21 Op. 377.

*See also* TREATIES, II, d.

**GETTYSBURG BATTLEFIELD.**

1. The appropriation made by the act of March 3, 1887 (24 Stat. 535), “for the erection of monuments or memorial tablets for the purpose of marking the position of each of the commands of the regular army engaged at Gettysburg,” is not applicable to the purchase of land for the sites of such monuments or tablets. 19 Op. 79.

2. **Construction of a trolley railroad over—Injunction to restrain.**—The Secretary of War is authorized by the act of March 3, 1893 (27 Stat. 600), and the laws of Pennsylvania of 1889 (pp. 106–108) to take condemnation proceedings to acquire certain land, being a portion of the battlefield of Gettysburg over which a trolley railroad is being constructed, and may apply to the court for an injunction to restrain the operation and construction of said railroad. 20 Op. 628.

**GIFTS.**

FROM A PRINCE OR FOREIGN STATE. *See* CONSTITUTIONAL LAW, 16.

**GOLD.**

GOLD BARS EXCHANGED FOR GOLD COIN. *See* TREASURY DEPARTMENT, 171–173.

**GOODS IMPORTED FOR THE GOVERNMENT.**

*See* CUSTOMS LAW, XII.

**GOVERNMENT ADVERTISEMENTS.**

*See* EXECUTIVE DEPARTMENTS, IV.



**GOVERNMENT CONTRACTS.**

Relating to any particular Executive Department, *see* that Department.

Relating to Executive Departments generally.

*See* EXECUTIVE DEPARTMENTS, IV.

Government contracts generally. *See* CONTRACTS.

**GOVERNMENT EMPLOYEES.**

*See* UNITED STATES, II; EXECUTIVE DEPARTMENTS; and the several Executive Departments.

**GOVERNMENT HOSPITAL FOR THE INSANE.**

*See* DISTRICT OF COLUMBIA, IV.

**GOVERNMENT PRINTING OFFICE.**

*See* PUBLIC PRINTING, II.

**GOVERNMENT PROPERTY.**

*See* UNITED STATES, VI.

**GOVERNMENT TRANSPORTATION.**

*See* Railroads, 10-16, 29, 35, 38, 39, 65-70.

**GOVERNMENTAL REGULATION.**

OF FREIGHT RATES. *See* INTERSTATE COMMERCE, 9-15.

**GRADE.**

*See* ARMY, II, d; NAVY, II, d.

**GREAT BRITAIN.**

*See* CLAIMS, II, 80-87; EXTRADITION, 5; TREATIES, II, e; IV.

**GREAT FALLS.**

1. **Dam at Great Falls.**—The appropriation by the act of March 2, 1895 (28 Stat. 752), for raising the height of the dam at Great Falls, and for damages on account of flooding of land and other damages, was intended to cover all damages that might result from raising the dam  $2\frac{1}{2}$  feet higher than had been contemplated under the act of July 15, 1882 (22 Stat. 168). 21 Op. 223.

2. **Ownership of the land and water power.**—Not the duty of the Attorney-General to investigate and report to the Senate in regard to.—In response to a resolution of the Senate directing the Attorney-General to investigate and report to that body who are the owners of the land and water power at the Great Falls of the Potomac River: *Advised* that any information on the subject found in the records of the Department would be gladly furnished the Senate, but that beyond this, it was submitted, such investigation is not within the duties of the Attorney-General as prescribed by law. 17 Op. 324.

**GREAT FALLS ELECTRIC RAILWAY COMPANY.**

1. **Approval of survey.**—The Secretary of War is not authorized, under the provisions of the act of July 29, 1892 (27 Stat. 326), to approve a survey of the Great Falls Electric Railway Company over the lands of the Washington aqueduct, where the inner rail of said railway will be less than the required distance from the point specified in said act. 21 Op. 294.

2. **The granting of a revocable license to the Washington and Glen Echo Railway Company to lay a single track on the Aqueduct Reservation near Cabin John Bridge** does not conflict with the acts of July 29, 1892 (27 Stat. 326), and June 3, 1896 (29 Stat. 246), authorizing the construction of the Washington and Great Falls Railway and providing that there shall be but one railway parallel to and near the Conduit road, that provision being merely a restriction upon the latter company. 22 Op. 240.

3. **The license granting the right to construct the road should contain such restrictions**

or regulations as may be necessary to fix its location and protect Government property. *Ib.*

4. Long-continued exercise of a power of this kind by the Secretary of War, and the open and notorious use of Government reservations by such licensees without legislative objection from Congress or the adoption of any legislative rule on the subject, implies the tacit assent of Congress to this custom. *Ib.*

5. The right to issue such a license can not be maintained upon any ground except the benefit to the public interests, and can not be used as a basis for granting, under the guise of a temporary license, a permanent right to maintain a railroad. It confers no contractual right upon the licensee. *Ib.*

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#### GREAT KANAWHA RIVER, W. VA.

See NAVIGABLE WATERS, 49.

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#### GREAT LAKES.

See NAVIGATION, 1, 2.

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#### GREAT SIOUX RESERVATION.

See INDIANS, 37.

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#### GREECE.

See TREATIES, 34-36.

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#### GUADALUPE HIDALGO.

See TREATIES, 40, 42, 45.

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#### GUAM.

1. Governor of—Condemnation—Title.—In June, 1900, the military governor of Guam undertook to condemn, by proceedings not in conformity with Spanish law, certain private property in that island needed for public

use, and subsequently, on the 23d of the same month, issued an order declaring abrogated, retroactively from the 3d of that month, all Spanish law concerning the condemnation of property in that island. On July 9, 1900, the owner of the property accepted the amount awarded and gave a receipt therefor. *Held* that such proceedings and the acceptance of the award thereunder by the owner vested the title to the property in the United States. 25 Op. 59.

2. Same—Power.—The power of the governor, under instructions dated January 12, 1899, was intended to be plenary, and he had authority to do what the exigencies of military government required. *Ib.*

3. Same.—The Constitution of the United States has not been extended to Guam. *Ib.*

4. Transportation of cargoes from San Francisco to Guam in British vessels.—Cargoes may be transported from San Francisco to Guam in British vessels without incurring the penalty of forfeiture under section 4347, Revised Statutes, as amended by the acts of June 19, 1886 (24 Stat. 79), February 15, 1893 (27 Stat. 455), and February 17, 1898 (30 Stat. 243). 25 Op. 128.

5. Navigation laws not extended to Guam.—Congress has not yet extended the laws of the United States relating to entry, clearance, and manifests of steamships, and other similar laws, to Guam. *Ib.*

6. Title to lot 144, city of Agana.—Under article VIII of the treaty of peace with Spain of 1898, the United States acquired by cession a valid title to lot 144, city of Agana, island of Guam, which at that time belonged to the Spanish Government. 25 Op. 242.

7. The Secretary of the Navy may issue commissions to the naval officers serving as military governors of the islands of Guam and Tutuila. 25 Op. 292.

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#### GUANTANAMO NAVAL STATION.

1. Proof of title.—The provisions of section 355, Revised Statutes, are not applicable to the expenditures authorized by the act of March 3, 1903 (32 Stat., 1188), for the erection of necessary improvements on lands at Guantanamo, Cuba, leased by the United States from the Republic of Cuba for the purposes of a naval station. 25 Op. 160.

2. *Same.*—The advance payments of rental to the Government of Cuba provided for in article 1 of the agreement of July 2, 1903, may lawfully be made without further proof of title than the certified copies of the deeds conveying the lands to that Government. *Ib.*

*See also* SHIPPING, 70, 71.

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#### GUESSES.

*See* LOTTERY, 13-18.

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#### GUITEAU, CHARLES J.

*See* REPRIEVE.

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#### GUNBOAT.

*See* NAVY, VII, 204.

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#### GUNS, CARRIAGES, ETC.

*See* ARMAMENT AND FORTIFICATIONS, 3, 4.

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#### GUNNERS.

*See* NAVY, II, d, 89, 90.

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#### HALF PAY PENSIONS.

*See* PENSIONS, 8.

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#### HAMILTON-BROOKS CIGAR STAMP.

*See* INTERNAL REVENUE, 11, 12.

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#### HANDWRITING.

*See* COURTS-MARTIAL, 13, 14.

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#### HARBORS.

*See* NAVIGABLE WATERS, II, c, 3; III, c.

### HEADS OF EXECUTIVE DEPARTMENTS.

*See* EXECUTIVE DEPARTMENTS, II, b.

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#### HAWAII.

1. The officers of the Hawaiian government have no authority to sell or otherwise dispose of the public lands in the Hawaiian Islands, and any such sales or agreements to sell are absolutely null and void as against the Government of the United States. 22 Op. 574.

2. *Same.*—By the resolution of annexation the local government of Hawaii was deprived of all authority to dispose of public lands in any manner whatsoever, except by virtue of special laws enacted by Congress. *Ib.*

3. Disposal of public lands.—By the resolution of annexation the public property of Hawaii, including the lands, became vested in the United States, and only by their authority or direction can those lands be disposed of. 22 Op. 627.

4. *Same.*—All interest of the Republic of Hawaii in public lands at the time the resolution of annexation took effect was thereby transferred to the United States, and thenceforth the officials of Hawaii were without power to convey by grant or cession the legal or equitable title of the United States. *Ib.*

5. The resolution of annexation took effect as of the date of its approval, to wit, July 7, 1898, with respect to public lands and not August 12, 1898, the date on which the ceremonies took place formally transferring possession. *Ib.*

6. The Hawaiian government has no power to convey or confirm title to public lands where conditional sales or entries were made prior to the resolution of annexation, and the conditions entitling such persons or entrymen to a grant have been subsequently performed, such power having been transferred to the United States. *Ib.*

7. Congress having failed to legislate on the subject of public lands for the Hawaiian Islands, the government of Hawaii is not re-invested with its former power of their disposition. *Ib.*

8. The Hawaiian Republic, as a separate and sovereign power, ceased to exist when the resolution of annexation took effect, and it exists as an organized government only for the

purpose of municipal legislation and for such special purposes as were expressed in the resolution, the sale and disposition of the public lands not being one of the latter class. *Ib.*

9. **Public lands of.**—The President is authorized, under section 91 of the Organic Act of the Territory of Hawaii (31 Stat. 159), to take such of the public lands of Hawaii as he deems proper for the uses and purposes of the United States. 24 Op. 600.

10. **Acquisition of Federal building site in Honolulu.**—The Secretary of the Treasury may, if authorized by the President, accept a site for a Federal building in Honolulu acquired in exchange for public land in Hawaii and assume the custody and control thereof, no objection thereto arising under section 3736, Revised Statutes, or otherwise. *Ib.*

11. **Admission of Chinese.**—The restrictions placed upon the admission to the United States of Chinese persons of the exempt class, and the regulations affecting the departure and return to this country of registered Chinese laborers, are to be held applicable to Chinese persons applying for admission to the Hawaiian Islands or to such persons residing there who may wish to depart with the intention of returning. (Par. 8 of the resolution of July 7, 1898 (30 Stat. 751). 22 Op. 249.

12. **The laws of the United States affecting the Hawaiian Islands,** as well as the laws of such islands, are to remain generally undisturbed by reason of the resolution of annexation, until Congress provides a government therefor. *Ib.*

13. **Any law of the Hawaiian Islands inconsistent with the terms of the resolution of annexation** is invalid and inapplicable. *Ib.*

14. **Return of Chinese.**—The Secretary of the Treasury has authority to admit to the Hawaiian Islands such Chinese persons as departed therefrom under regulations of the existing government, allowing them to return, as they are not excluded by the extension to the islands of the law and regulations now operative within the United States. 22 Op. 353.

15. **Citizenship of Chinese.**—All Chinese persons who on August 12, 1898, were citizens of the Republic of Hawaii, became, by virtue of section 4 of the act of April 30, 1900

(31 Stat. 141), citizens of the United States. 23 Op. 509.

16. **Same.**—Any Chinese person who was a citizen of the Republic of Hawaii on August 12, 1898, and who has not since abandoned or been legally deprived of his citizenship, is a citizen of the United States. 23 Op. 352.

17. **American registry—Vessels carrying an Hawaiian registry.**—Such naturalized Chinese citizen may take the oath required by sections 4131 and 4142, Revised Statutes, and have his vessel admitted to registry as an American vessel, provided it carried an Hawaiian register on the 12th of August, 1898, and was at that time owned *bona fide* by a citizen of Hawaii or of the United States. *Ib.*

18. **Citizenship of Chinese born or naturalized in Hawaii.**—Under the provisions of section 4 of the Hawaiian act of April 30, 1900 (31 Stat. 141), a Chinese person born or naturalized in the Hawaiian Islands prior to the annexation of that Territory, and who has not since lost his citizenship, is a citizen of the United States. 23 Op. 345.

19. **Same.**—The wife and children of such naturalized Chinaman are entitled to enter the territory "by virtue of the citizenship" of the husband and father. *Ib.*

20. **Same.**—A Chinese child born in Hawaii in 1885 and taken to China by his mother is entitled to reenter that Territory where his father still resides. *Ib.*

21. **Entrance of Chinese now legally resident in the United States.**—There is nothing in the resolution of annexation of the Hawaiian Islands (30 Stat. 750), nor in the Organic Act which provides a government for that Territory (31 Stat. 141), nor in any law of Congress, which would prevent the entrance into those islands of Chinese, now legally resident in the United States and holding certificates of registration provided for by the acts of May 5, 1892 (27 Stat. 25), and November 3, 1893 (28 Stat. 7). 23 Op. 487.

22. **The "further immigration of Chinese"** forbidden by the resolution of annexation is immigration from other countries than the United States. *Ib.*

23. **Right of Chinese to return to United States from Hawaii.**—The question of the right of such Chinese persons to return to the

United States from the Hawaiian Islands not decided. *Ib.*

**24. Certain claims of foreign subjects against Hawaii which accrued prior to annexation and which have been presented to the Department of State should properly be presented to, considered, and paid by the Hawaiian government.** All such claims should first be received by the Department of State, through diplomatic channels, and then be transmitted to the government of Hawaii for adjustment. 22 Op. 584.

**25. Similar claims of citizens of the United States may be presented directly to the Hawaiian government, or such other proceedings be taken in court as the municipal laws of Hawaii allow.** *Ib.*

**26. These and similar questions may be submitted by the Department of State to the Court of Claims for determination, but the Attorney-General can not consistently advise such reference.** *Ib.*

**27. The Hawaiian authorities can not in anywise certify to the national character of a vessel, as Hawaiian national character can no longer be attributed to vessels owned by inhabitants of the islands.** 22 Op. 578.

**28. The registration laws of Hawaii have been abrogated as a necessary consequence of its annexation to the United States, and an order of the Executive suspending the issuance of Hawaiian registers would be a legal exercise of power under the resolution of Congress annexing Hawaii.** *Ib.*

**29. Copyright laws.—The inhabitants of Hawaii, in the absence of affirmative legislation by Congress to that effect, are not entitled to the benefits of the United States copyright laws.** 22 Op. 268.

**30. Legislature of — Increase of circuit judges.—The power of the Territorial legislature of Hawaii is that conferred expressly or by proper implication by the Organic Act organizing that Territory (31 Stat. 141), that act standing in relation to the legislature of that Territory much as the Constitution of the United States does to Congress.** 23 Op. 539.

**31. Same.—The grant of the power of legislation conferred by section 55 of that act, within the limitation prescribed, confers the power to organize the courts of that Territory, to fix their jurisdiction, and the number of their judges.** *Ib.*

**32. Same—Not an abdication of power by Congress.—This grant of power is not an abdication by Congress of any of its own power to legislate for the Territory, but only a grant of such powers as Congress does not itself choose to exercise. This limitation forbids the exercise of such power whenever and to the extent that it has been exercised by Congress in subsisting enactments.** *Ib.*

**33. Tonnage tax.—Vessels from Hawaiian ports are still, notwithstanding the annexation of those islands to the United States, vessels from foreign ports, within the meaning of the tonnage-tax law.** 22 Op. 150.

**34. Same.—The resolution annexing the Hawaiian Islands is intended to have the effect of a treaty of cession merely, whereby those islands become, in a broad sense, subject to American sovereignty. How that sovereignty will regulate their status with regard to itself and its laws is not thereby intended to be determined.** *Ib.*

**35. Same.—In that resolution Congress affirmatively indicated its intent that such laws as our tonnage-tax laws are to remain undisturbed until it shall provide a form of government for such islands, or until the commission shall advise and Congress shall enact legislation therefor.** *Ib.*

**36. When territory is acquired by treaty or conquest, or otherwise, its relation to the nation acquiring it depends upon the laws of that nation, unless controlled by the instrument of cession.** *Ib.*

**37. National banks.—The act of April 30, 1900 (31 Stat. 141), extended the national banking laws of the United States to the Territory of Hawaii, and the Comptroller of the Currency is authorized to grant permission for the organization of national banks therein.** 23 Op. 177.

**38. Same.—Sections 5154 and 5155, Revised Statutes, do not apply to banks existing in Hawaii prior to the passage of the act of April 30, 1900, but refer exclusively to banks organized under special or general laws of a State.** *Ib.*

**39. Honolulu is a Pacific port of the United States within the meaning of the tariff act of July 24, 1897 (30 Stat. 151, 190), and coal imported into the United States, which is afterwards used for fuel on board a vessel propelled by steam plying between the ports of**

New York and Honolulu and registered under the laws of the United States, is entitled to drawback under paragraph 415 of that act. 24 Op. 6.

40. **Title to Kahaniki Military Reservation.**—By the joint resolution of Congress of July 7, 1898 (30 Stat. 750), accepting the cession of the Hawaiian Islands and the transfer to the United States of the ownership of all public lands therein, and by acquiring by purchase from individuals the leases held by them covering the lands comprising the military reservation of Kahaniki, Oahu Island, the United States acquired complete title to that reservation. 25 Op. 225.

41. **Sale of steam tug "Eleu."**—The sale of the steam tug *Eleu* by the superintendent of public works of Hawaii, which vessel became the property of the United States upon the annexation of the Hawaiian Islands in 1898, not having been authorized by Congress as provided in section 91 of the act of April 30, 1900 (31 Stat. 159), is void. 25 Op. 522.

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#### HAZING.

See NAVAL ACADEMY.

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#### HEAD TAX.

See IMMIGRATION, V.

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#### HEALTH AND QUARANTINE.

1. **Quarantine is not actus Dei**, but an ordinary incident of travel, to be contemplated by one undergoing a voyage. 21 Op. 575.

2. **Local health officers can not lawfully prevent inspectors of customs from landing at quarantine stations in the discharge of their duties;** but the latter, while visiting and remaining at such stations, should observe all reasonable regulations in the interest of public health. 18 Op. 15.

3. **Same—Reasonable quarantine regulations.**—No local health regulation which denies to inspectors of customs ample opportunities for then and there protecting the public revenue is reasonable. *Id.*

4. **The Surgeon-General of the Marine-Hospital Service and the Secretary of the Treasury may, with the approval of the President, make needful and proper quarantine regulations, not inconsistent with State laws and regulations.** 20 Op. 466.

5. **The only limitation on the powers conferred upon the Surgeon-General of the Marine-Hospital Service and the Secretary of the Treasury, subject to the approval of the President, to make quarantine regulations with reference to immigration from infected ports is that Federal regulations must not interfere with State laws.** It is competent for those officials to prescribe a longer quarantine period, both for persons and cargo, than the State law requires, the regulations carefully providing that the Federal jurisdiction should attach upon the expiration of State action. 20 Op. 468.

6. **A proposed quarantine regulation requiring the inspection by Federal authorities of State and local maritime quarantines in order to ascertain whether the national quarantine regulations are being complied with, prepared by the Secretary of the Treasury, under the act of February 15, 1893 (27 Stat. 449), is legal and in accordance with that act.** 20 Op. 645.

7. **In view of the outbreak of cholera in Asia Minor and other places on the continent of Europe, the President has authority to use so much of the unexpended balance of the sum appropriated by the joint resolutions approved September 26 and October 12, 1888 (25 Stat. 954), for quarantine service and the prevention of epidemics, as may be necessary in his judgment to keep the various quarantine stations open throughout the fiscal year 1889-90.** 19 Op. 398.

8. **A quarantine regulation against yellow fever, which provides for an exception in the case of vessels bound for ports of the United States north of the yellow fever danger line, does not constitute a discrimination within the meaning of the quarantine law of February 15, 1893 (27 Stat. 449), providing that "all rules and regulations made by the Secretary of the Treasury shall operate uniformly and in no manner discriminate against any port or place."** 21 Op. 446.

9. **The President is authorized by the act of March 27, 1890 (26 Stat. 31), in the event he is satisfied that cholera, yellow fever, smallpox, or plague exists in any State or Ter-**

ritory or in the District of Columbia, to adopt and enforce such rules and regulations as may be necessary to prevent its spread into another State or Territory or into the District of Columbia, and this notwithstanding the provisions of the act of February 15, 1893 (27 Stat. 450). 22 Op. 106.

10. *Same.*—The general provisions of section 3 of the act of February 15, 1893, do not repeal or supersede the special provisions of section 1 of the act of March 27, 1890. *Ib.*

11. *Alien immigrants pronounced by competent authority under the act of March 3, 1891, to be suffering from a loathsome or dangerous contagious disease are not entitled to enter the United States.* 22 Op. 122.

12. *Same.*—Entrance by land, as well as landing from a vessel, is forbidden by the act. *Ib.*

13. *Same.*—Transportation companies conducting the business of transportation, either by land or by water, are included within the term "person," as used in section 6 of this act, and are accordingly liable to the penalties prescribed therein. *Ib.*

14. *Same.*—The officers or servants of a corporation responsible for or actually engaged in breach of the immigration laws under the act of 1891 are liable to the penalty imposed by section 6, in addition to which the corporation itself is liable for such violations. *Ib.*

15. The Secretary of Agriculture may slaughter such sheep as are adjudged to be infected with a contagious disease or exposed to such infection, and in making the compensation provided by section 8 of the act of August 30, 1880 (26 Stat. 414), he is limited to those which were exposed to infection but in which the disease was not manifest. 22 Op. 390.

16. *Same.*—The language of section 8 of this act, authorizing the slaughter of infected animals, is in terms merely permissive and not mandatory. The power conferred is to be exercised or not, and when, and to what extent, according to the discretion of the Secretary of Agriculture, which should be exercised with due regard to its necessity upon the one hand, and for the rights of private property upon the other. *Ib.*

17. The provision in the act of May 29, 1884 (23 Stat. 31), giving the Commissioner of Agriculture power to expend money in such disinfection and quarantine measures as may be necessary to prevent the spread of pleuro-

pneumonia from one State or Territory into another, does not authorize him to purchase animals infected with that disease for the purpose of slaughter. 18 Op. 154.

18. Under section 7 of act of August 30, 1890 (26 Stat. 416), the Secretary of Agriculture may adopt and enforce regulations requiring that food and attendance should be provided to quarantined cattle by the owners. 21 Op. 193.

19. *Same.*—In cases where an outlay becomes necessary to prevent the loss of quarantined cattle, such outlay may lawfully be made from the appropriation act of March 2, 1895 (28 Stat. 733); and the Secretary of Agriculture may hold such cattle until such expenses are repaid, and sell them upon failure or refusal to repay within a reasonable time. *Ib.*

20. *Same.*—Owners should be advised of the expenditure and of the time within which such expenses must be paid. *Ib.*

*See also* EXECUTIVE DEPARTMENTS, 54, 55.

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### HIGH SEAS.

JURISDICTION OF OFFENSES COMMITTED ON.  
*See* TREATIES, IV.

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### HOLDING MORE THAN ONE OFFICE.

*See* OFFICE AND OFFICERS, V.

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### HOLDING OVER.

*See* OFFICE AND OFFICERS, IV.

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### HOLIDAY ADJOURNMENT

*See* CONGRESS, III, 26, 28.

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### HOLIDAYS.

1. *Per diem* employees at the Washington Navy-Yard on duty April 6, 1899, should be allowed and paid for that day without reduction of compensation for the portion of the day that the navy-yard was closed by Executive order of the President. 22 Op. 472.

2. **Navy - Yard employees — Philippine Islands.**—The resolutions of January 6, 1885 (23 Stat. 516), and January 23, 1887 (24 Stat. 644), allowing pay to per diem employees "on duty in the United States," for services on certain legal holidays, do not extend to the Philippine Islands. 25 Op. 127.

3. **Saturday holiday in the District of Columbia—Hours of labor in Executive Departments.**—"Every Saturday after 12 o'clock noon" is a holiday for all purposes within the District of Columbia, and is, therefore, one of the "days declared public holidays by law" within the meaning of the statutes regulating the number of hours of labor which must be required of all clerks and employees in the Executive Departments. Consequently, heads of Departments are not obliged to require labor of such clerks, etc., after the hour of noon on Saturdays. 25 Op. 40.

4. **Same—District Code.**—Heads of Departments must require at least seven hours' labor of all their clerks and other employees every day in the year except Sundays and days declared to be holidays by section 1389 of the Code of the District of Columbia, and during authorized leave; and, if the public service requires it, the hours of labor may be extended by special order and may include holidays as well as ordinary days. *Ib.*

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#### **HOMESTEAD.**

*See* PUBLIC LANDS, II.

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#### **HONORABLY DISCHARGED SOLDIERS.**

*See* CIVIL SERVICE, V; DEPARTMENT OF COMMERCE AND LABOR, III, 26-28.

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#### **HOSPITAL POINT LIGHT STATION.**

1. The grant to the Government of the site of the Hospital Point Light Station in Massachusetts, which is bounded by a line running to the shore and thence *by the shore*, etc., does not include the shore. 19 Op. 20.

2. Had the site been bounded in the deed "on or by the sea" instead of "by the shore," the result would have been different. *Ib.*

#### **HOT SPRINGS RESERVATION.**

*See* RESERVATIONS AND PARKS, 2-4.

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#### **HOURS OF LABOR.**

*See* EXECUTIVE DEPARTMENTS, 5-7; PANAMA, 9-11, 15-16.

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#### **HOUSE OF REPRESENTATIVES.**

*See* CONGRESS, IV.

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#### **HOUSTON STREET, KNOXVILLE, TENN.**

JURISDICTION OVER. *See* UNITED STATES, V.

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#### **HUDSON HIGHLAND BRIDGE AND RAILWAY COMPANY.**

*See* NAVIGABLE WATERS, III, a, 135.

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#### **HUDSON RIVER.**

OBSTRUCTION TO NAVIGATION. *See* NAVIGABLE WATERS, III, c, 170.

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#### **HUMACAO, PORTO RICO.**

*See* CABRAS ISLAND.

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#### **HUNTING.**

1. **Hunters' license — Foreign representatives—Exemption.**—There being no Federal statute requiring the payment of a license tax for the privilege of hunting or shooting upon territory subject to the jurisdiction of the United States, it follows that no exemption from its payment has been made in favor of the diplomatic or consular representatives of foreign governments residing within the United States. 23 Op. 607.



**2. Prohibition of hunting upon forest reserves.**—The Secretary of the Interior can not, without express authority of law, prescribe rules and regulations by which the national forest reserves may be made refuges for game, or by which the hunting, killing, or capture of game thereon may be forbidden. 23 Op. 589.

**3. Same.**—Neither the act of June 4, 1897 (30 Stat. 11, 34), nor the act of March 3, 1899 (30 Stat. 1095), nor any other provision of law confers upon the Secretary of the Interior this power. *Ib.*

#### HYDRAULIC MINING.

See CALIFORNIA DÉBRIS COMMISSION.

#### ILLEGAL FEES.

PAID TO CUSTOMS OFFICERS. See CUSTOMS LAW, VI, 382.

#### ILLINOIS.

A statute of Illinois providing that the United States "shall have the right of exclusive legislation and concurrent jurisdiction" is not a compliance with an act of Congress for the erection of a building at Galesburg, which provides for exclusive jurisdiction save as to the "administration of the criminal laws of said State and the service of civil process therein." 20 Op. 242.

#### IMMEDIATE TRANSPORTATION.

(Act of June 10, 1880, 21 Stat. 173.)

See CUSTOMS LAW, III, h, 136, 137.

#### IMMIGRANT FUND.

See PORTO RICO, 20, 21; IMMIGRATION, 27, 91, 92.

#### IMMIGRATION.

##### I. In General, 1-19.

##### II. Officers, etc.

- a. *Secretary of the Treasury*, 20-26.
- b. *Superintendent of Immigration*, 27.
- c. *Inspectors*, 28-29.
- d. *Boards of Immigration*, 30.

##### III. Laws and Regulations.

- a. *Contract Labor Laws*, 31-42.
- b. *Regulations*, 43-44.

*Immigration Laws, see under the various divisions of the subject Immigration.*

##### IV. Exclusion and Deportation, 45-52.

##### V. Head Tax, 53-73.

##### VI. Fines, Penalties and Forfeitures, 74-90.

##### VII. Ellis Island, 91-103.

##### I. In General.

1. Half-breed Indians emigrating to the United States from Canada are not precluded by existing legislation from retaining the bounty of the United States in addition to that of the Dominion of Canada. 18 Op. 423.

2. "Immigration" means the act of immigrating, and to immigrate is to come into a country of which one is not a native, and in which one has not acquired a residence or domicile. 22 Op. 353.

3. An alien domiciled and residing in the United States who ships on a vessel for a round voyage from a port in this country is an alien resident and not an alien immigrant, within the meaning of the act of March 3, 1893 (27 Stat. 569). 23 Op. 278.

4. Same.—An alien immigrant is one who for the first time enters this country with the intention of making it his home. *Ib.*

5. Same—Returning horsemen—Treasury Circular No. 135, of 1899.—The fact that a steamship company which ships in this country horsemen who intend to return, fails to obtain the certificate required by Treasury Circular No. 135, of 1899, does not preclude the admission of such returned horsemen, of whose fundamental right to enter this country under such circumstances, as resident aliens, the Secretary of the Treasury is assured. *Ib.*

6. An alien who has resided in this country without becoming naturalized, and who de-

parts with the intention of returning, is not to be deemed an immigrant upon his return, although he was an alien immigrant when he first entered the country. 22 Op. 353.

7. **Bona fide seamen** have always been excepted from the operation of our immigration laws, although not excepted therefrom by express language; their inclusion in the class of alien immigrants can fairly be regarded as beyond the intention of Congress. 23 Op. 521.

8. **Same.**—Only such seamen are excepted from the class of passengers upon whom the head-money tax is imposed by the act of August 3, 1882 (22 Stat. 214), and from the class of alien immigrants, as are seamen in good faith and have no intention, by reason of their passage, to leave the ship and make entry into this country. *Ib.*

9. **"An alien seaman"** is one who, in pursuit of and as a necessary incident of his calling, temporarily enters this country and is awaiting his departure; while an **"alien immigrant"** is one who enters the country with the intention of remaining in it. *Ib.*

10. **Deserting seamen—alien immigrants.**—Aliens who become seamen for the purpose of securing an entrance into this country free from the barriers of the immigration statutes are none the less alien immigrants, and may be deported if within the prohibited classes. *Ib.*

11. **Same—Right to detain and examine.**—This power to exclude carries with it the right to detain and examine all seamen of a given vessel if, in the judgment of the Secretary of the Treasury, the execution of the immigration statutes requires it. *Ib.*

12. **Same—Power of the Secretary of the Treasury.**—It is within the power of the Secretary of the Treasury to make such examination and take such precaution as may be reasonably necessary to prevent an alien immigrant, whether he be a sailor or not, from entering this country in the sense that all immigrants enter it. *Ib.*

13. **Same—Question of good faith.**—It is not the duty of the Attorney-General, and he can not, from the meager facts submitted, determine the question of good faith or intention on the part of the deserting sailors from the British steamship *Columbia*, as to whether they came to this country pursuant to their calling, intending to ship again, or

as immigrants. That duty rests with the Treasury Department. *Ib.*

14. The list of immigrants required by section 1 of the act of March 3, 1893 (27 Stat. 569), should be made by masters of vessels before departure from a foreign country. 22 Op. 460.

15. Under this act the immigrants can not be classed as such according to the parts of the vessel they occupy, as the word **"immigrant"** undoubtedly embraces persons who may be, and sometimes are, in the cabins. *Ib.*

16. The separation of those who should and who should not be subjected to the examination and listing is a matter of practical administration intended to be regulated by the Secretary of the Treasury. *Ib.*

17. The Secretary of the Treasury is vested with power to make and apply such rules relative to the question of immigration as may be shown from time to time to be necessary and convenient. *Ib.*

18. **Immigrant list—Alien residents shipping for a round voyage.**—In case an alien domiciled and residing in the United States ships on a vessel for a round voyage from a port in this country in a capacity other than that of seaman, no fine is incurred by the vessel or master, under the act of March 3, 1893 (27 Stat. 569), if on such alien's return he is not entered on an immigrant list as provided in the statute. Such persons are alien residents and not alien immigrants, within the meaning of that act. 23 Op. 278.

19. **Castle Garden business privileges.**—The Commissioners of Emigration of the State of New York are not bound under the act of August 3, 1882 (22 Stat. 214), and their contract made by the Secretary of the Treasury agreeably thereto to account for and pay over to the Treasury Department moneys received by them for privileges granted to individuals to transact in Castle Garden certain business with the immigrants there. 19 Op. 155.

## II. Officers.

### a. Secretary of the Treasury.

20. **Power of Secretary of the Treasury—Not confined to employment of State agencies.**—In carrying out the provisions of the immigration act of August 3, 1882 (22 Stat. 214), the Secretary of the Treasury is not restricted

to the employment of the means and agencies mentioned in sections 2 and 4 of that act, to wit, entering into contracts with State commissioners, boards, or officers, to take charge of the local affairs of immigration, and to provide for the support and relief of needy immigrants, etc., but may, in his discretion, have recourse to other appropriate means and agencies. 19 Op. 486.

21. The power vested in the Secretary of the Treasury by section 2 of the act of August 3, 1882 (22 Stat. 214), to contract with commissions, boards, or other legal officers of immigration designated by the governor of any State, is withdrawn by the provisions of section 7 of the act of March 3, 1891 (26 Stat. 1085). 20 Op. 69.

22. *Same.*—In so far as the later act is an amendment of the former the two acts are to be construed together as one act, and one part is to be interpreted by the other. *Ib.*

23. The Secretary of the Treasury has full authority over the management of immigration affairs and over the proper use and application of all moneys to be used in such affairs, and especially over all moneys of the immigrant fund. 20 Op. 380.

24. The separation of immigrants who should and who should not be subjected to the examination and listing is a matter of practical administration intended to be regulated by the Secretary of the Treasury. 22 Op. 460.

25. The Secretary of the Treasury is vested with power to make and apply such rules relative to the question of immigration as may be shown from time to time to be necessary and convenient. *Ib.*

26. It is within the power of the Secretary of the Treasury to detain and examine all seamen of a given vessel if, in his judgment, the execution of the immigration statutes requires it, and to take such precaution as may be reasonably necessary to prevent any alien immigrant, whether he be a sailor or not, from entering this country in the sense that all immigrants enter it. 23 Op. 521.

IMMIGRANT FUND. *See* 27, 91, 92.

INSANE. *See* 50.

MATTERS RELATING TO ELLIS ISLAND. *See* VII.

POWER TO MAKE RULES AND REGULATIONS. *See* 43, 44.

REMISSION OF FINES OR PENALTIES. *See* VI.

#### b. Superintendent of Immigration.

27. The salaries of the Superintendent of Immigration and of his clerical assistants authorized by section 7 of the act of March 3, 1891 (26 Stat. 1085), may be paid by the Secretary of the Treasury out of the immigration fund created under section 1 of the act of August 3, 1882 (22 Stat. 214). 20 Op. 69.

#### c. Inspectors.

28. The salaries of the inspectors of immigration appointed under the second paragraph of section 8 of the act of March 3, 1891 (26 Stat. 1085), may be paid in the discretion of the Secretary of the Treasury out of the immigrant fund or out of the immigration appropriation of the sundry civil act of 1891 (26 Stat. 968). 20 Op. 69.

29. Supervising inspector—Special inspector.—The Secretary of the Treasury has power to appoint or designate a supervising inspector or special inspector to perform such duties as he shall direct and to serve at such places as will, in the judgment of the Secretary, best promote the administration of the Immigrant-Inspection Service, and such appointee may properly be paid from the immigrant fund. 20 Op. 259.

#### d. Boards of Immigration.

30. It is not the duty of a United States attorney to advise or defend boards of immigration; but the Secretary of the Treasury is empowered by the act of August 3, 1882 (22 Stat. 214), to employ, and pay out of the immigrant fund, counsel for those purposes. 18 Op. 108.

### III. Laws and Regulations.

#### a. Contract Labor Laws.

31. The immigration clearly forbidden by section 1 of the act of February 26, 1885 (23 Stat. 332), is that brought under contract to perform manual labor or service; and manual labor includes both skilled and unskilled labor. 23 Op. 381.

32. *Same.*—The case of the *Church of the Holy Trinity v. United States* (143 U. S. 457) considered. The proper distinction, founded on this case (*ib.* 463), is that between manual labor, including the mechanical trades, on the one side, and the professions on the other. *Ib.*

33. **Same.**—Alien lacemakers, if not entitled to admission into this country under some provision contained in the above-named act, or acts supplemental thereto, should be excluded as manual laborers, skilled or unskilled, who have come to this country in order to perform labor or service. *Ib.*

34. **Skilled employees of foreign exhibitors at the World's Columbian Exposition**, who come in good faith for the purpose of setting up and operating the machinery of such exhibitors, are outside of and not subject to the contract-labor laws of the United States. 20 Op. 89.

35. **Clerks, storekeepers, and other persons coming to this country for the sole purpose of aiding the exhibitor to take part in the exposition** are outside of and not subject to contract-labor laws of the United States. 20 Op. 151.

36. **Compromise of judgment—Power of the Secretary of the Treasury.**—It is doubtful if the power given to the Secretary of the Treasury by section 3469, Revised Statutes, to compromise "any claim," extends to a judgment recovered by the United States against a corporation in a suit for a penalty for violation of the contract-labor law of February 26, 1885 (23 Stat. 332). 19 Op. 345.

37. **Same.**—Neither section 2 of the act of March 3, 1891 (26 Stat. 1084), nor any other previous law referred to in that section, gives authority to anyone to settle or compromise judgments entered under section 3 of the contract-labor act of February 26, 1885 (23 Stat. 333). 20 Op. 530.

19 Op. 345, adhered to. *Ib.*

38. **The transfer of a Chinese crew from one vessel to another within a port of the United States** is not a violation of the alien contract-labor laws. 24 Op. 111.

39. **The transfer of the Chinese crew of the Danish steamer *Arab* to the Danish steamer *Stanley Dollar*, and of a Chinese crew from a vessel of the Pacific Mail Steamship Line to the steamer *Siberia*, of the same line, in a port of the United States**, would not involve a violation of either the Chinese exclusion laws or the alien contract-labor laws. Those laws have no application to seamen who, in good faith, are engaged in navigation, and who are temporarily within a port of the United States for that purpose. 24 Op. 553.

40. **Certain natives of the Philippine Islands, not being professional actors, artists, or singers,**

**within section 5 of the contract-labor law of February 26, 1885 (23 Stat. 332), are properly excluded, unless on other grounds they may be regarded as not within the prohibition of the law.** 22 Op. 495.

41. **Same.**—As the claim of these aliens for admission appears meritorious and no possible competition with American labor will be involved, and as they will be returned to their country in due time, there is no conclusive objection to the Secretary of the Treasury exercising his administrative discretion favorably in admitting them. *Ib.*

42. **Same.**—The law does not necessarily exclude all persons who do not come within its express exceptions if they are not manual laborers. *Ib.*

#### b. Regulations.

43. **Regulations for landing of passengers.**—Section 3 of the act of August 3, 1882 (22 Stat. 214), known as the immigration act, invests the Secretary of the Treasury with power to make all necessary regulations for carrying out its provisions; and under this power he may, by regulation, forbid the landing by the master of any passenger from his vessel until an examination of the passengers thereon is had, whether cabin or steerage. 9 Op. 706.

44. **Same.**—The Secretary of the Treasury is vested with power to make and apply such rules relative to the question of immigration as may be shown from time to time to be necessary and convenient. 22 Op. 460.

For Immigration laws in general, *see* under various divisions of the subject Immigration.

#### IV. Exclusion and Deportation.

45. **Criminals.**—Immigrants who formerly resided temporarily in the United States, but took no steps to become citizens thereof, and returning to Italy were convicted there of crime and served out a sentence and upon their discharged were given passports to the United States, are not exempted from the provisions of sections 2 and 4 of the act of August 3, 1882 (22 Stat. 214), and section 1 of the act of March 3, 1891 (26 Stat. 1084), and should be returned to Italy. 20 Op. 371.

46. **Same—Pardon—May land.**—Where it appeared that an immigrant from a foreign

State was convicted of an offense there, sentenced to imprisonment, and after having served a portion of his sentence was given an unconditional pardon: *Held* that section 4 of the act of August 3, 1882 (22 Stat. 214), and section 5 of the act of March 3, 1875 (18 Stat. 477), do not forbid his landing in the United States. 18 Op. 239.

47. A Chinese person suffering from a dangerous contagious disease belongs to one of the classes of aliens which should be excluded from the United States under the provisions of the immigration act of March 3, 1903 (32 Stat. 1213). 24 Op. 706.

48. Section 36 of the act of March 3, 1903 (32 Stat. 1213).—The object of the proviso in section 36 of the above-named act was to prevent a misinterpretation of the repealing clause in that section, and to forestall any attempt to secure the admission of Chinese theretofore prohibited, from entering the United States under a claim that this act was intended to contain all provisions regulating the immigration of aliens, and that it expressly repealed the Chinese-exclusion laws. *Ib.*

*See also* VI—Fines, Penalties, and Forfeitures.

49. Insane.—Provision of section 2 of the act of August 3, 1882 (22 Stat. 214), that if among the passengers of a vessel arriving at one of our ports is found a "convict, lunatic, idiot, or any person unable to take care of himself or herself without becoming a public charge," such person shall not be permitted to land, considered; and held not to apply to the case of a lunatic whose father will engage satisfactorily that he will not become a public charge. 18 Op. 500.

50. Same.—The Secretary of the Treasury is authorized to permit an insane alien immigrant to land in this country upon receiving a satisfactory bond that the immigrant will not become a public charge and that the country shall be protected against loss by reason of her coming here. (18 Op. 500, followed.) 20 Op. 79.

51. Custody pending deportation or appeal.—By the immigration act of March 3, 1891 (26 Stat. 1084), steamship companies are held responsible for the custody of immigrants pronounced to belong to the prohibited classes by the Commissioner of Immigration at Ellis Island, and awaiting deportation, or pending

proceedings on appeal or habeas corpus. 20 Op. 415.

52. Same.—Shipowners, chargeable, as above stated, with the safe custody of aliens, may detain them at some suitable place off the ship until the time of sailing, provided the permission of inspection officers be first obtained in every case. *Ib.*

CONTRACT LABORERS. *See* III, a.

## V. Head Tax.

53. The duty of 50 cents a passenger imposed by the act of August 3, 1882 (22 Stat. 214), upon all itinerant persons, not citizens of the United States, coming to our ports in steam or sail vessels from foreign ports, should be collected on each successive return as often as any such person enters one of our ports. 18 Op. 196.

54. Same.—The tax of 50 cents imposed by the act of August 3, 1882 (22 Stat. 214), is applicable to all passengers, not citizens of the United States, who shall come by steamer or sail vessel from a foreign port to any port within the United States, whether as immigrants or merely as tourists. 18 Op. 185.

55. The duty imposed by the act of August 3, 1882 (22 Stat. 214), upon passengers, other than citizens, coming to any port within the United States, is to be exacted of convicts, lunatics etc., although by the terms of the statute they are not to be permitted to land and are required to be returned to whence they came. 18 Op. 135.

56. Collection of.—The act of August 3, 1882 (22 Stat. 214), known as the immigration act, confers upon the collector of customs, under proper regulations of the Secretary of the Treasury, the power to require the master of a vessel arriving within his collection district from a foreign country to detain all passengers on such vessel until they shall have been examined by the customs officers, for the purpose of determining the amount of head money collectible under that act from the master. 19 Op. 706.

57. Same.—Section 3 of that act invests the Secretary of the Treasury with power to make all necessary regulations for carrying out its provisions; and under this power he

may, by regulation, forbid the landing by the master of any passenger from his vessel until an examination of all the passengers thereon is had, whether cabin or steerage. *Ib*

58. **Same.**—Detention of passengers for purposes of quarantine or tax charge is clearly within the power and duty of the master, where it is required of him by law, or by regulation pursuant to law. *Ib*.

59. **Same.**—Provisions of section 9 of the act of August 2, 1882 (22 Stat. 186), called the passenger act, considered and construed in connection with the same subject. *Ib*.

60. The Secretary of the Treasury is authorized, under section 26 of the shipping act of June 26, 1884 (23 Stat. 59), to refund the head tax levied in the case of the steamship *Russia* under the provisions of the act of August 3, 1882 (22 Stat. 214), or so much thereof as he may think proper, if, upon investigation, he finds that the same was illegally, improperly, or excessively imposed. 19 Op. 660.

61. **Same.**—As sections 2932 and 3013 of the Revised Statutes were repealed before the date of the exaction under consideration, it does not appear that any power to refund the money illegally exacted exists, except under section 26 of the act of June 26, 1884 (23 Stat. 59). *Ib*.

62. **Same.**—Assuming that the money was illegally levied and is unlawfully withheld from the rightful owner, a construction that will do justice may properly be adopted if it can be done in accordance with existing statutes. *Ib*.

63. **Same.**—Head tax is a lien upon the vessel as well as a debt against the owner thereof, and has no relation to the collection of customs duties. *Ib*.

64. **Same.**—Head tax is not subject to the customs revenue act of June 10, 1890 (26 Stat. 131), any further than it may be affected by the repeals contained in section 29 thereof. Neither section 14 nor section 24 covers or includes this tax. *Ib*.

65. Citizens of the Philippine Islands coming to the United States from foreign ports are not required to pay the head tax prescribed by section 1 of the act of March 3, 1903 (32 Stat. 1213). 25 Op. 131.

66. Alien diplomatic officers—Act applies to.—The act of March 3, 1903 (32 Stat. 1213), which requires the payment by transporta-

tion companies of a duty of \$2 for each and every passenger not a citizen of the United States, or of Canada, Mexico, or Cuba, who shall be brought into the United States by them, applies as well to alien officials coming into the United States on diplomatic missions as to aliens who are private individuals and come here for other purposes. 25 Op. 370.

67. **Same.**—A charge upon transportation companies.—The duty thus imposed is not a tax upon the officials of foreign governments, but is merely a charge imposed upon the transportation company for every passenger brought into the United States by it. *Ib*.

68. Immigration regulations—Head-tax deposit.—The requirement of Rule 15 of the Immigration Regulations of August 26, 1903, for the enforcement of the act of March 3, 1903 (32 Stat. 1213), requiring a deposit of \$2 for each alien passenger arriving at the port of San Francisco on steamers from Sydney, New South Wales, and way ports, seeking admission into the United States and claiming to be in transit through the same, is not invalid. 25 Op. 109.

69. **Same.**—Officers charged with the enforcement of the above-named regulation must not, however, apply the rule with such strictness or harshness as to render the refunding of the sums paid thereunder, in proper cases, impossible or unreasonably difficult of attainment. *Ib*.

70. Tax does not apply to persons en route to another country.—The passengers on whom the tax provided by the acts of August 3, 1882 (22 Stat. 214), and August 18, 1894 (28 Stat. 391), is imposed are those who make the United States their place of destination, and not those who touch at our ports en route to some other country. 21 Op. 543.

71. Alien passengers—Transshipped in port of the United States.—The mere transfer from one vessel to another in a port of the United States of alien passengers en route to their destination in a foreign country does not subject such persons to the payment of the "head tax" or duty prescribed by section 1 of the act of August 3, 1882 (22 Stat. 214), as amended by the act of August 18, 1894 (28 Stat. 391). 24 Op. 590.

72. The head tax upon alien passengers brought into ports of Porto Rico should be accounted for and credited to the "immigrant fund," as is done with like collections upon

alien passengers arriving at ports in the United States. 24 Op. 86.

**73. Seamen in good faith excepted.**—Only such seamen are excepted from the class of passengers upon whom the headmoney tax is imposed by the act of August 3, 1882 (22 Stat. 214), and from the class of alien immigrants as are seamen in good faith and have no intention, by reason of their passage, to leave the ship and make entry into this country. 23 Op. 521.

#### VI. Fines, Penalties, and Forfeitures.

**74. Remission for violation of immigration laws, not authorized.**—The Secretary of the Treasury is not authorized under Title LXVIII, Rev. Stat., to remit a fine or penalty incurred for violation of the alien immigration laws. 20 Op. 705.

**75. Section 5292, Revised Statutes, is liable to erroneous construction** by reason of defective punctuation. It may be understood to mean "*any person who shall have incurred any fine, penalty, or forfeiture, or disability, or*" [who] "*may be interested in any vessel or merchandise which has become subject to any seizure, forfeiture, disability,*" thus providing for two distinct classes of cases. By reference to the original act (1 Stat. 506) it will be seen by the title that "any person" and "any fine, penalty," etc., is limited to the "certain cases therein mentioned." *Ib.*

**76.** The case of a fine or penalty incurred for violation of the alien immigration law does not fall within the purview of the statutes embraced under Title LXVIII, Revised Statutes. *Ib.*

**77.** The fines imposed after a verdict of guilty of the statutory misdemeanor of allowing certain foreign pauper immigrants to land after being ordered to detain them are not a claim in favor of the United States within the meaning of section 3469, Revised Statutes, and can not be compromised under that statute. 20 Op. 685.

**78. Remission of fines.**—The act of March 3, 1891 (26 Stat. 1084), confers no authority upon the Secretary of the Treasury to remit fines imposed on a vessel or her master for allowing the escape of alien immigrants whose deportation has been ordered. 23 Op. 271.

**79. Same.**—Neither is the power of remission in such cases conferred by section 5294, Revised Statutes, as amended by the act of March 2, 1896 (30 Stat. 39). *Ib.*

**80. Same.**—The fact that it might be equitable or desirable to include in the power of remission, under existing laws relative to this power, new cases not contemplated when those laws were adopted, can not overcome and enlarge the defined and restricted language and application of the law. *Ib.*

**81. Contract labor.**—To constitute a violation of the act of March 3, 1891, there must be a refusal on the part of the master to receive back on board his vessel such aliens, or a neglect to detain them thereon, or a refusal or neglect to return them to the port from which they came. *Ib.*

**82. Same—Escape of alien immigrant where due precaution was taken.**—But where the master has taken every precaution to detain in safe custody and to prevent an escape, and yet in some real and unforeseen emergency an escape has occurred, there is no such neglect as the act contemplates. In such case no fine has been incurred, and therefore none can be imposed. *Ib.*

**83. Same—Return of deposit not a remission of a fine or penalty.**—The Secretary has authority to return a deposit to cover a fine which might be due, but which turns out not to have been incurred. Such return would not be a remission of a fine or penalty, but the restitution of an amount to which the Government was never justly entitled. *Ib.*

**84. Improper manifest—Fine—Collection.**—Section 15 of the act of March 3, 1903 (32 Stat. 1217), and rule 24 of the Immigration Regulations prescribe a penalty of \$10 for each alien on board a vessel entering a port of the United States concerning whom the master has either not furnished a list or manifest or has furnished one which does not contain the information required by sections 12, 13, and 14 of that act; and a collector of customs has no authority to impose a fine or to collect a sum of less than that amount for each such violation of the statute. 25 Op. 336.

**85. Same.**—The proper method of enforcing collection of a penalty imposed for a violation of sections 12, 13, and 14 of the act of March 3, 1903, where payment is refused, is by a prosecution for the offense or an action to recover the penalty. *Ib.*

86. **Same—Remission.**—The Secretary of Commerce and Labor has no authority to remit or to reduce a fine or penalty thus imposed, such power not having been specifically conferred by Congress. *Ib.*

87. **Transportation companies bringing into the United States aliens afflicted with disease pronounced to be "loathsome or dangerous contagious,"** are liable to the penalties prescribed by section 6 of the act of March 3, 1891 (26 Stat. 1085). 22 Op. 122.

88. **Same.**—Corporation officers or servants responsible for or actually engaged in such breach of the immigration laws are liable to fine and imprisonment under that act. *Ib.*

89. **Same.**—A corporation is liable for the acts of its officers, agents, or servants done by its authority, and for every wrong it commits, or for quasi-criminal acts, and in such case the doctrine of *ultra vires* has no application. *Ib.*

90. **Same.**—Transportation companies conducting the business of transportation, either by land or water, are included within the term "person," as used in section 6 of said act. *Ib.*

#### VII. Ellis Island.

91. **Ellis Island—Expenditure of immigrant fund.**—The Secretary of the Treasury is authorized to expend from the immigrant fund such money as may be necessary for finishing certain contracts and making final payments thereon in connection with putting Ellis Island in condition for use as a receiving station for immigrants. 20 Op. 379.

92. **The Secretary of the Treasury has full authority over the management of immigration affairs and over the proper use and application of all moneys to be used in such affairs, and especially over all moneys of the immigrant fund.** *Ib.* (380).

93. **Annulment of contracts for rentals.**—The express stipulation in certain contracts with reference to rentals at Ellis Island that they may be annulled by the Secretary of the Treasury for cause implies some facts or state of facts inducing or justifying an abrogation of the contract for the benefit of the United States. 21 Op. 115.

94. **Revocable license—Exhibition hall, etc.**—The Secretary of the Treasury may grant a license, revocable at his will, to use a por-

tion of Ellis Island, an immigrant station, for the purpose of erecting and maintaining an exhibition hall and conducting a land and labor bureau. 21 Op. 473.

95. **Secretary has no authority to lease any part of Ellis Island.**—The Secretary of the Treasury has no power to lease for a term of years, or for any length of time, the property of the Government placed in his charge without express authority of law, and no authority exists under which he can lease any part of Ellis Island. 21 Op. 476.

96. **Same.**—He has power under section 9 of the act of March 3, 1893 (27 Stat. 569), to grant exclusive privileges in connection with Ellis Island immigrant station, after public competition, subject to such limitations and conditions as he may prescribe. *Ib.*

97. **Same.**—There can not strictly be a lease of a use. *Ib.*

98. **Ferriage and subsistence contract.**—The Secretary of the Treasury is authorized by the act of August 3, 1882 (22 Stat. 214), and sections 7 and 8 of the act of March 3, 1891 (26 Stat. 1085), to contract both as to ferriage to and from Ellis Island, and subsistence of immigrants and employees, for a reasonable term, subject to the rights of the officers and agents of the Government, to any legislation that Congress may enact, and to such rules and regulations as the Secretary may adopt. The contract may confer the exclusive privilege of transportation and the collection of a reasonable compensation therefor. 20 Op. 217.

99. **Same.**—The inhibition contained in section 3735, Revised Statutes, is not applicable to the contracts under consideration. *Ib.*

100. **Termination of the contract.**—In the contract for ferry service between Ellis Island immigrant station and the barge office, New York, to continue for three years, and thereafter from year to year, until terminated by notice from either party, given sixty days before the end of the original period or any one year thereafter, and in which it was also covenanted that the contract might be annulled and terminated at any time by the Secretary of the Treasury for good and sufficient cause: *Held* that the burning of the buildings on Ellis Island, the removal of the immigrant station from that place, and the discontinuance of the ferry service, supplied a good and sufficient cause for the termination of the



contract by the Secretary of the Treasury. 21 Op. 585.

101. *Same*.—What one party to a contract may have personally understood a provision to mean at the time the contract was made can not avail. What both parties understood controls, and that is to be ascertained from the language of the contract itself. *Ib*.

102. **Money exchange privilege—Construction of contract.**—A stipulation in a contract between the Government and a certain firm granting to the latter the money exchange privilege at the Ellis Island immigrant station, New York Harbor, which provides that the contractors shall "cash all checks and drafts drawn on banks and banking houses in the city of New York of well-known standing" presented by aliens arriving at that station, can not be construed to refer to domestic drafts only. 25 Op. 133.

103. *Same*.—The understanding between the officers of the Government and the contractors prior to the making of the contract that drafts drawn upon a certain individual need not be cashed, was equivalent to an agreement that his establishment was not of the standing referred to in the stipulation. *Ib*.

CHINESE IMMIGRATION. *See* CHINESE.

COMPROMISE. *See* 36, 37, 77.

CUSTODY OF PROHIBITED CLASSES, 51, 52.

ELLIS ISLAND. *See* VII.

EMPLOYMENT OF COUNSEL. *See* 30.

EXPENDITURE OF IMMIGRANT FUND. *See* 27, 91, 92.

EXPENDITURE, ELLIS ISLAND. *See* 30, 91, 92.

PARDON. *See* 46.

REMISSION. *See* 74, 75, 78–86.

QUARANTINE. *See* HEALTH AND QUARANTINE.

SEAMEN. *See* 3, 7–10, 18.

*See also* ALIENS; and CITIZENSHIP.

#### IMPLIED WARRANTY.

*See* CONTRACTS, 83.

#### IMPORTATIONS.

GENERALLY. *See* CUSTOMS LAW.

BY MAIL. *See* CUSTOMS LAW, 401.

FOR THE GOVERNMENT. *See* CUSTOMS LAW, XII.

OF MEATS. *See* FOOD PRODUCTS, 8, 9.

OF CRANK SHAFT, ETC., FOR DISABLED FOREIGN VESSEL. *See* CUSTOMS LAW, 196, 197.

ON IMPORTED WHEAT. *See* CUSTOMS LAW, 374–378.

DRAWBACK. *See* CUSTOMS LAW, VI, b.

IMPORTATIONS PROHIBITED. *See* CUSTOMS LAW, VII.

#### IMPRESSMENT.

*See* CLAIMS, 11.

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*See* CLAIMS, III.

#### IMPROPER MANIFEST.

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*See* INTERNAL REVENUE, II, i.

#### INCOMPATIBLE SERVICE.

*See* OFFICE, V, 87–89.

#### INDEMNITY.

*See* CABLES, 20; PUBLIC LANDS, VII.

#### INDIAN AGENTS.

1. **Use of penalty envelopes.**—Indian agents and registers and receivers of land offices are, by virtue of section 29 of the act of March 3, 1879 (20 Stat. 362), entitled to use the penalty envelope for the transmission of official mail matter between themselves and other officers of the United States or between themselves and the Executive Departments, but not for

the transmission of such matter to private persons. 17 Op. 255.

2. **Same.**—These officers are not “departmental in their character” within the meaning of sections 5 and 6 of the act of March 3, 1877 (19 Stat. 335, 336). *Ib.*

3. **Same.**—When supplied with official postage stamps by the Departments, they may use them for the transmission of official mail matter as well to private persons as to other officers of the Government. *Ib.*

4. Section 3 of the act of July 5, 1884 (23 Stat. 158), making appropriations for the service of the Post-Office Department, etc., does not grant to Indian agents, or receivers and registers of land offices, the right to free registry of official letters and packets. Such letters and packets are not registered by either a Department, or a Bureau of a Department, within the provisions of that act. 18 Op. 54.

5. **May act as deputy marshals.**—No statute prohibits a person from acting as an Indian agent and a deputy marshal at the same time. 20 Op. 494.

6. **Same.**—The Attorney-General is precluded from answering the question as to whether the appointment of an Indian agent as a deputy marshal is likely to cause any contention or conflict of authority, as that is not a legal question. *Ib.*

7. Where an Indian agent's account consists of a receipt roll, not the original paper, but merely the abstract of several vouchers accompanying it, one of which contains but one item that is false that bears no relation to the other items in the account, the penalty of section 8 of the act of July 4, 1884 (23 Op. 97), reaches no further than to take away the agent's right to credit for any part of that item. 20 Op. 561.

8. Where the false item occurs in the printed form entitled “Pay roll of regular employees,” and is signed by twelve persons, each stating opposite his name the kind of work done by him, the receipts thus taken are so many separate and distinct vouchers within the meaning of the proviso of the above section. *Ib.*

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#### INDIAN COUNTRY.

See INDIAN TERRITORY; OKLAHOMA, 3.

#### INDIAN DEPREDAATION CLAIMS.

See CLAIMS, I, c.

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#### INDIAN INSPECTORS.

See INDIANS, XI.

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#### INDIAN OFFICE.

See DEPARTMENT OF THE INTERIOR, III, d.

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#### INDIAN POLICE.

See INDIANS, XI.

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#### INDIAN SCHOOLS.

See INDIANS, II, b.

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#### INDIAN SUPPLIES.

See INDIANS, IX.

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#### INDIAN TERRITORY.

1. Internal-revenue taxes on distilled spirits, fermented liquors, tobacco, etc., produced in the Indian Territory, and special taxes on the manufacture and sale of those articles in that Territory, may lawfully be collected within the same. 18 Op. 66.

2. Where property is seized by the military authorities in the Indian country for violation of the laws relating to the Indians, on or as soon as practicable after report is made to the United States attorney it should be placed in the custody of the proper civil officers. 18 Op. 544.

3. **Same.**—The provision of section 3086, Revised Statutes, by which property seized under any law relating to the customs is left in the custody of the collector or principal officer of the customs of the district, is not

to be considered as embraced in the proceedings contemplated in section 2125, Revised Statutes, so as to permit the military employed in making seizures to retain the custody of the property to abide adjudication. *Ib.*

4. The opinion of May 15, 1889 (19 Op. 306), holding that sections 2139 and 2140, Revised Statutes, are no longer applicable in Oklahoma, and that the sale of spirituous liquors and beer in such Territory is not forbidden, does not conflict with the collection of the special tax on retail liquor dealers in the Indian country and Alaska under section 3244, Revised Statutes. 21 Op. 25.

5. The establishment of a distillery in the Indian Territory on lands wherein the Indian title is said to be extinct would be in contravention of the laws relating generally to the Indian country (sec. 2141, Rev. Stats.), and also of section 8 of the act of March 1, 1895 (28 Stat. 697), which applies specially to the Indian Territory. 22 Op. 232.

6. There is no portion of the Indian Territory wherein the Indian title has become extinct to the extent that it has ceased to be Indian country, or where the prohibition above referred to does not apply. *Ib.*

7. Same.—While the general Indian country ceases to be such upon the extinction of the Indian title, the Territory as organized and defined by meets and bounds and named Indian Territory does not at all cease to be such upon any such contingency. *Ib.*

See OKLAHOMA, 3.

8. United States marshal—Powers.—The marshal appointed under the act of March 1, 1889 (25 Stat. 783), providing for the organization of a court in the Indian Territory, has the same powers in that Territory which a sheriff in Arkansas has in his own county; and his power to appoint deputies is limited only by the necessity of the case. 19 Op. 293.

9. Same—Posse comitatus.—He may call to his assistance, in the execution of the law civilians, but not the military forces of the United States, the use of the latter as a *posse comitatus* being forbidden by section 15 of the act of June 18, 1878. (20 Stat. 145, 152.) *Ib.*

10. Same.—It is competent for the President, under section 5298, Revised Statutes, to direct the military forces to render the marshal such

aid as may be necessary to enable him to maintain the peace and enforce the laws of the United States in that Territory. *Ib.*

11. The troops of the United States can not be employed in the Indian Territory for the purpose of assisting in the preservation of peace and the arrest of bandits and outlaws unless they are trespassing upon Indian country, or absconding offenders within the provisions of section 2152, Revised Statutes. 21 Op. 72.

12. Appointment of commissioners.—The United States court for the Indian Territory is not invested with authority to appoint commissioners; and hence the accounts of commissioners thereby appointed, for issuing writs for the arrest of persons charged with offenses, are inadmissible. 19 Op. 443.

13. Same.—Such writs are no protection to the marshal for anything he may do under them, nor is he entitled to compensation for serving them. *Ib.*

14. A National bank can not be lawfully established at Muscogee, a town in the territory of the Creek nation. The effect of certain provisions in the treaties with the Creek Nation of Indians of August 28, 1856, and August 11, 1866, which render inoperative in the Creek territory the various national banking laws, considered. 19 Op. 342.

15. National banks.—In view of the provisions of the act of May 2, 1890 (26 Stat. 81), entitled "An act to provide a temporary government for the Territory of Oklahoma," etc., there no longer exists any obstacle to the establishment of national-banking associations in the Indian Territory. 19 Op. 585.

16. The President is not authorized to appoint a commissioner of the World's Columbian Exposition from Indian Territory. 20 Op. 452.

COURTS OF. See INDIANS, VII.

## INDIAN WAR CLAIMS.

See CLAIMS, I, c.

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## INDIANS.

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## XIV. Indian Treaties.

## I. Generally.

a. *Status*.

1. While Indians are not commonly understood to be embraced by laws of Congress, yet they may be and often are, and whether they are or not is a question of intent. 21 Op. 466.

2. An Indian residing in the Indian Territory, who is a member of one of the tribes there, and subject to tribal jurisdiction, is not eligible to appointment as a postmaster, he

being incompetent, in contemplation of law, to take the required oath of office. 18 Op. 181.

3. *Same*.—It is also doubtful if such Indian would be competent to give the required official bond. *Ib*.

b. *Part Blood*.

4. The question whether or not the Sioux half-breed or quarter blood is an Indian within the meaning of the act of March 2, 1889 (25 Stat. 888), is to be determined not by the common law, but by the laws or usages of the tribe. 20 Op. 711.

5. *Same*.—Such laws or usages are not matters of which judicial notice can be taken, but present questions of fact upon which the Attorney-General can not advise. *Ib*.

6. *Same*.—Presumptively, a person apparently of mixed blood residing upon a reservation and claiming to be an Indian is in fact an Indian. *Ib*.

Reaffirmed, as to the meaning of the word "Indians." 20 Op. 742.

7. The presumption is that a person partly of Sioux blood, residing on the reservation and claiming to be an Indian, is in fact an Indian until the contrary is shown. 20 Op. 742.

8. Treaty stipulations are deemed to apply to half-breeds as well as full bloods, unless otherwise therein specially provided. *Ib*.

9. The acceptance of scrip under the Sioux half-breed scrip act of July 17, 1854 (10 Stat. 304), is no estoppel to a claim of being a Sioux Indian. *Ib*.

10. *Mrs. Jane P. Waldron—Presumption*.—Neither the treaty of Prairie du Chien of July 15, 1830 (7 Stat. 328), nor any of the proceedings thereunder, overthrow the presumption arising from *Mrs. Jane E. Waldron's* race, residence, and claim to Indian citizenship, and the recognition of said claim by the United States officials before and at the time of the agreement of 1889 (25 Stat. 888). *Ib*.

11. *Identification of part-blood Mississippi Choctaw Indians*.—Paragraph 41 of the agreement of March 21, 1902, between the United States and the Choctaw and Chickasaw tribes of Indians, ratified by act of Congress approved July 1, 1902 (32 Stat. 641), does not authorize the identification of part-blood children of Mississippi Choctaws who are themselves identified solely by reason of full

blood. Such children must in some other way, if possible, establish their claims to participate in the benefits arising from the treaty of September 27, 1830 (7 Stat. 333), between the United States and the Choctaw Nation. 24 Op. 689.

*c. Citizenship—Intermarriage.*

**12. Citizenship—Intermarriage—Subsequent marriage to white person.**—The seventh section of the Choctaw intermarriage act of November 9, 1875, which provides that citizens of the United States intermarrying into the Choctaw Nation and subsequently, as widow or widower, marrying a white person having no rights of Choctaw citizenship by blood shall lose all rights acquired by the former marriage, is not inconsistent with the Constitution, laws, or treaties of the United States. 19 Op. 109.

**13. Same.**—That section is valid and binding on all citizens of the Choctaw Nation, but affects only their rights acquired under said act. *Ib.*

**14. Same—Divorce.**—The fact that a white man was divorced from his Indian wife, upon her petition, is evidence that he parted from her without just provocation, and brings the case within the provision of the Choctaw act of October, 1840, declaring that any white man parting from his wife without just provocation shall be deprived of citizenship. *Ib.*

**15. Citizenship—Intermarried white—Divorce.**—Claim of James Bragg to citizenship in the Choctaw Nation of Indians reconsidered; and *advised* that upon the record of the case as now made up tending to show that he was divorced from his wife upon his own application and for good cause, he is entitled to such citizenship. 19 Op. 179.

**16. Citizenship—Father a member of tribe, and names upon tribal pay rolls.**—W. C. Lykins and E. W. W. Lykins, brothers claiming to be members of the confederated tribes of the Kaskaskias, Peorias, Weas, and Piankeshaws, whose father was a member of the Kaskaskias tribe, and whose names appear upon the tribal pay rolls, must be treated by the United States as members of the tribe. 19 Op. 115.

**17. Intermarried white—Right of suffrage.**—Article 38 of the treaty of April 28, 1866 (14 Stat. 769), with the Choctaws and Chickasaws, which declares that "every

white person who, having married a Choctaw or Chickasaw, resides in the said Choctaw or Chickasaw Nation, etc., is to be deemed a member of said nation," does not confer upon such white person the right of suffrage. 19 Op. 389.

**18. Same.**—Whether he is entitled to such right must be determined, not by that article alone, but by the provisions of the constitution of the nation in which he may be domiciled, and its laws relating to suffrage and elections. *Ib.*

**19. Choctaw and Chickasaw citizenship court—Annulment of judgment of citizenship.**—The annulment by the Choctaw and Chickasaw citizenship court of a judgment of the United States court for Indian Territory affirming a favorable decision of the Commission to the Five Civilized Tribes, upon an application for enrollment as a citizen, as provided in the act of June 10, 1896 (29 Stat. 339), so far deprived the applicant of a favorable judgment as to devolve upon *him* the duty of transferring his cause to the citizenship court for hearing therein, as provided in section 31 of the act of July 1, 1902 (32 Stat. 641), in order to protect and to preserve his claimed rights. 25 Op. 152.

**20. Same.**—The annulment of such a judgment of the United States court did not revive and put into force and effect the judgment of the Commission admitting an applicant to citizenship, and an enrollment by the Commission based upon such a theory would be a clear violation of the rights of the Indian nations. *Ib.*

**21. A North Carolina Cherokee Indian who removed into the Cherokee Nation and permanently located there subsequent to the date of the act of the Cherokee legislature of 1870 relating to the admission to citizenship in that nation of North Carolina Cherokees, and made proof as in said act is required, and was thereupon admitted to citizenship by the chief justice of the supreme court of the Cherokee Nation under its provisions, thereby became fully invested with the rights, privileges, and immunities of Cherokee citizenship.** 19 Op. 229.

**22. Same.**—The action of the chief justice, under the act, is final, and leaves nothing for review. *Ib.*

**23. Same.**—The Interior Department is under no obligation to respect a later decision of

the Cherokee authorities made pursuant to the, order of a commission subsequently established. *Ib.*

See also INDIANS, 10, 59.

#### d. Removal.

#### 24. Cherokee Indians of North Carolina.—

In the case of certain Cherokee Indians of North Carolina, who left their homes in that State on the supposition that they would be furnished by the United States with transportation to the lands owned by their tribe in the Indian Territory: *Advised* that there is no authority under existing legislation to effect the removal of these Indians in the manner supposed, as above. Act of July 29, 1848 (9 Stat. 264), considered. 17 Op. 72.

ALLOTTEES. See III, a.

## II. Reservations and Schools.

### a. Reservations.

25. Construction of dam across Yakima River by irrigation company.—The question as to the right of an irrigation company to construct a dam across the Yakima River, which is one of the boundaries of the Yakima Indian Reservation, is not one arising in a matter before the Interior Department, as the Secretary has no authority to settle that question; it is essentially judicial in character, and therefore the Attorney-General has no power to give an opinion thereon. 20 Op. 314.

26. Trespassers—Removal of.—The Commissioner of Indian Affairs and his subordinate, the Indian agent, have full discretion under sections 2118, 2147, and 2149, Revised Statutes, to remove from the Puyallup Indian Reservation, Wash., any person not of the tribe of Indians entitled to remain there; and in so doing, may, by direction of the President, use any military force necessary for the purpose. 20 Op. 245.

27. Same.—An order of the State court restraining the Indian agent from so doing is beyond its jurisdiction and void, and should be disregarded. *Ib.*

28. Trespassers on Indian lands.—Under the treaties with the Five Civilized Tribes of Indians no person not a citizen or member of a tribe, or belonging to the exempted classes,

can be lawfully within the limits of the country occupied by these tribes without their permission, and they have the right to impose the terms upon which such permission will be granted. 23 Op. 214.

29. Same—Ejectment of trespassers.—Sections 2147 to 2150, inclusive, of the Revised Statutes, expressly confer the right to use the military forces of the United States in ejecting trespassers upon Indian lands, and the grant of this power carries with it the duty of its exercise. *Ib.*

30. Same.—It is the duty of the Department of the Interior to remove all classes forbidden by treaty or law who are within the domain of the Five Civilized Tribes without Indian permission; to close all businesses which require permit or license and are being conducted without the same; and to remove all cattle which are being pastured on said land without Indian permit or license. *Ib.*

31. Restoration to public domain—Old Winnebago and Crow Creek reservations.—The contiguous tracts of land lying on the east bank of the Missouri River in the Territory of Dakota, known as the Old Winnebago and Crow Creek reservations, are protected by the provisions of the treaty of April 29, 1868 (15 Stat. 635), with the Sioux Indians; and the Executive order of February 27, 1885, restoring portions of such tracts to the public domain, is in violation of that treaty, and consequently inoperative and void. 18 Op. 141.

32. Restoration to public domain where statute not strictly complied with.—Where the statute (act of June 15, 1880, 21 Stat. 199), providing for the sale of Uncompahgre Ute Indian Reservation lands, bound the United States to give and the Indians to receive in severalty certain other lands in Colorado, if sufficient agricultural land should be found there, and if not, then such other agricultural lands as may be found in that vicinity and in Utah, and said Indians have been located wholly in Utah, additional legislation is required to enable the Secretary of the Interior to treat the former reservation as public land. 17 Op. 366.

33. The President has power to make a reservation for the occupation of Indians, from public domain lying within the limits of a State. 17 Op. 258.

34. Reservation for Indians not born or commorant in the United States.—The power of

the President to set apart a portion of the public domain for the exclusive occupancy of Indians does not include the case of a reservation for Indians not born or commorant in the United States. 18 Op. 557.

35. Where Indians on a reservation made by order of the President are organized tribes or bands, and placed under the charge of an agent appointed by the Government, the laws applicable to Indian reservations must be regarded as applicable to them. 18 Op. 563.

36. **Sioux Reservation—Sheyenne Island.**—At the date of the Sioux treaty of April 29, 1868 (15 Stat. 635), Sheyenne Island was within the Sioux Reservation, thereby established, the east line of which was the east bank of the Missouri River at low-water mark. The island having since gradually become attached to the mainland on the east bank of the river, so that it is wholly surrounded by water only in seasons when the water is high, the low-water mark is now on the west side of the island instead of the east side as formerly: *Held*, that the island is still a part of the reservation, notwithstanding the abandonment of its former channel on the east side of the same, whether the island now belongs to the reservation being determinable by the line of low-water mark on the east bank of the Missouri, not according to the present course of that river, but according to its course at the date of the treaty. 18 Op. 230.

37. **Great Sioux Reservation.**—The appropriation made by section 25 of the act of March 2, 1889 (25 Stat. 893), to be applied and used toward surveying the lands therein described as being opened for settlement, does not become available until acceptance by the different bands of Sioux Indians of the terms of that act as provided in the twenty-eighth section thereof. 19 Op. 467.

38. **Same.**—That act takes effect when, as matter of fact, the consent of the Indians thereto has been obtained. The proclamation issued under the provisions of section 28 of the act is only designed to be a public evidence of such consent. *Ib.*

39. **Ute Indian Reservation in Utah—Opening—Allotments.**—The lands of the Ute Indian Reservation in Utah Territory can not be declared open for settlement and disposal, under the act of June 15, 1880 (21 Stat. 203), before allotments provided for in that act are made. 17 Op. 262.

40. **Same.**—If, previous to such allotments, it is thought advisable that any land within the reservation should be opened to settlement and disposal, additional legislation will be necessary to enable this to be done. *Ib.*

41. **Timber on reservations—Right of Indians to cut and remove dead and fallen timber.**—Indians occupying reservations the title to which is in the United States subject to their occupancy have no right to cut and remove the dead and fallen timber thereon for the purpose of sale alone, such timber, where not used by the Indians for fuel or for agricultural or other purposes connected with the occupation of the land, being the property of the United States. 19 Op. 194.

*See also* INDIANS, IV.

42. **William G. Langford's claim to land—Nez Perces Indian Reservation.**—Opinion of Attorney-General Williams, of May 3, 1875 (14 Op. 569), as to the rights of William G. Langford in 640 acres of land within the Nez Perces Indian Reservation in Idaho Territory, reaffirmed; and *advised* that he has no such possessory interest in such land as would warrant the Interior Department in accepting the compromise proposed. 17 Op. 306.

43. **Right to fish.**—The Klamath River where it flows through the Klamath Indian Reservation, is a navigable stream, and the public have the right to fish there, and use it in any other way that does not amount to an interruption of, or an interference with, interstate or foreign commerce or navigation, or a violation of some law of the State of California. 19 Op. 35.

44. **Same.**—It is inexpedient for the Attorney-General to express an opinion upon certain questions proposed, relating to a right of fishery in the Klamath River, California, claimed in behalf of the Klamath Indians, such questions being justiciable in the appropriate courts at the suit of the Indians themselves who are interested in them. 19 Op. 56.

45. **Railroad through Indian Territory—Taking of timber, etc., for its construction.**—The Kansas and Arkansas Valley Railway Company has no right under the act of June 1, 1886 (24 Stat. 73), authorizing its construction through the Indian Territory, to go beyond the limits of the right of way therein prescribed for the purpose of taking timber or

other materials for the construction of such railroad. 19 Op. 42.

**46. Same.**—The courts named in section 8 of that act have jurisdiction over controversies between said company and the Cherokee Nation growing out of the taking of timber and other materials by the former beyond said limits. But the right of the Cherokees to go into court does not diminish in any degree the duty of the Executive Department of the Government to use its power for their protection. *Ib.*

**47. Right of way for railroad.**—The Secretary of the Interior has authority under the act of May 30, 1888 (25 Stat. 160), granting to the Washington and Idaho Railroad Company a right of way through the Cœur d'Alene Indian Reservation, to permit the construction of a railroad across the reservation prior to the ascertainment, fixing, and payment of the compensation as provided for in section 3 of that act. 19 Op. 199.

**48. Same.**—By that section three conditions precedent are annexed to the grant, namely: (1) The plats made upon actual survey for the definite location of the road must be filed; (2) those plats must be approved in writing by the Secretary of the Interior; (3) the compensation must be fixed and paid. Until all of these conditions are performed no right of any kind respecting the right of way becomes vested in the company. *Ib.*

RED CASE LAKE INDIAN RESERVATION, SALE OF INTOXICATING LIQUORS ON. See VIII.

#### b. Schools.

**49. Industrial schools—Erection of buildings.**—The appropriation made by the act of May 17, 1882 (22 Stat. 86), "for the purpose of further instructing and civilizing Indian children west of the Mississippi River," etc., is not applicable to the establishment of an industrial school and the erection of buildings therefor. 17 Op. 647.

**50. Superintendents and teachers—Appointment.**—The eighth section of the act of June 29, 1888 (25 Stat. 217, 238), making appropriations for the current and contingent expenses of the Indian Department, etc., had no effect on the then existing appointments of superintendents, teachers, etc., connected with Indian schools wholly supported by the

Government. The incumbents of the various positions referred to were lawfully in the public service after that act went into operation, and are legally entitled to be paid for their services during such period. 19 Op. 252.

**51. The proceeds of sales of articles manufactured in Indian manual and training schools** should not be turned into the Treasury, but be received by the Indian Bureau and used for the benefit of the Indian children in the schools. 17 Op. 531.

### III. Lands.

#### a. Allotment—Patents.

**52. The allotments of land to Indians** provided for by the act of February 8, 1887 (24 Stat. 388), should, under the requirements of the third section of that act, be made jointly by an agent specially appointed for that purpose and the agent in charge of the reservation. 19 Op. 14.

**53. Surveys of allotment lands—Appropriation for.**—By the ninth section of the act of February 8, 1887 (24 Stat. 391), an appropriation is made "for the purpose of making the surveys and resurveys mentioned in section two" of that act. In section 2 there is no mention of "surveys and resurveys." But section 1 of the same act contains a provision for "surveys and resurveys." *Advised* that the appropriation made as above is applicable to the making of "surveys and resurveys," as provided for in said section 1—such being the clear intent of Congress. 18 Op. 593.

**54. Allottees—Extension of trust patents beyond the period of twenty-five years.**—The allotment act of February 8, 1887 (24 Stat. 388), does not contemplate that the President may extend the period of twenty-five years as to all trust patents issued to Indian allottees of land, but only that such extension may be made in particular cases, in the discretion of the President. 25 Op. 483.

**55. Approval of patents to Choctaw and Chickasaw lands.**—The Secretary of the Interior is authorized to approve the patents executed by the principal chief of the Choctaw Nation and the governor of the Chickasaw Nation for the lands allotted to the



members of those tribes of Indians in accordance with the provisions of the act of June 28, 1898 (30 Stat. 495, 507), and his approval thereof is essential to constitute such patents a transfer to the allottees of such title as was intended by that act. 25 Op. 460.

56. It is the duty of the Government to protect the Indian allottees under the act of March 2, 1889 (25 Stat. 998), in the enjoyment of their allotments, and in the discharge of that duty the military forces of the United States may, if necessary, be employed by the President for their protection. 19 Op. 511.

57. The Indian allottees of the Kickapoo tribe, under the treaty of June 28, 1862 (13 Stat. 623), take their rights to the tracts allotted to them which have not yet been patented, under and by virtue of the said treaty as extended by the act of August 4, 1886 (24 Stat. 219), and not under act of February 8, 1887 (24 Stat. 388). 19 Op. 255.

58. *Same.*—Patents to those allottees to whom certificates were given under said treaty, but who had not received patents, should be issued under and in accordance with the terms of the treaty as extended by the said act of 1886. *Ib.*

59. *Same.*—The sixth section of said act of 1887, with respect to citizenship, applies to the Kickapoos who took allotments under the said treaty before the passage of that act as well as to those who have taken allotments since its passage and in pursuance of its provisions. But as the right of citizenship is only to be accorded after the patent is granted, the oath and proof required by the treaty, being prerequisites thereunder, must be taken and furnished. *Ib.*

60. The lands of the Ute Indian Reservation in Utah Territory can not be declared open for settlement and disposal, under the act of June 15, 1880 (21 Stat. 203), before allotments provided for in that act are made. 17 Op. 262.

61. *Same.*—If, previous to such allotments, it is thought advisable that any land within the reservation should be opened to settlement and disposal, additional legislation will be necessary to enable this to be done. *Ib.*

62. *Lease or rent.*—An Indian allottee, under the act of February 8, 1887 (24 Stat. 388), can not lawfully lease or rent the whole or any part of his allotment, either with or

without the approval of the Secretary of the Interior. 19 Op. 559.

CUTTING OR REMOVING TIMBER. *See* INDIANS, IV.

b. *Trespassers.*

63. *Trespassers—Removal.*—The Interior Department has power to remove intruders from lands of the Choctaws and Chickasaws in the Indian Territory, and it is its duty to do so under the provisions of the treaty of June 22, 1855 (11 Stat. 612-613). 17 Op. 134.

64. *Same.*—All persons (other than Choctaws or Chickasaws by birth or adoption) not comprised within some one of the excepted classes described in article 7 of that treaty, or article 43 of the treaty of April 28, 1866 (14 Stat. 779), are intruders. *Ib.*

65. *Same.*—The permit laws of the Choctaws and Chickasaws are valid; and those persons who are permitted thereunder to reside within their territory, or to be employed by their citizens as teachers, mechanics, or skilled agriculturists, may enter and remain on the lands of these tribes; but the right to remain there ceases when the permit expires. *Ib.*

66. *Same.*—Teachers, mechanics, and skilled agriculturists, not in the employ of the Government, and who are on such lands without permits from the Indian authorities, are intruders, and should be removed therefrom. *Ib.*

67. *Removal of trespassers.*—The Commissioner of Indian Affairs and his subordinates, the Indian agents, have full discretion under sections 2118, 2147, and 2149, Revised Statutes, to remove from the Puyallup Indian Reservation, Wash., any person not of the tribe of Indians entitled to remain there, and in so doing may, by direction of the President, use any military force necessary for the purpose. 20 Op. 245.

68. *Same.*—An order of the State court restraining the Indian agent from so doing is beyond its jurisdiction and void, and should be disregarded. *Ib.*

69. *Trespassers on Indian lands.*—Under the treaties with the Five Civilized Tribes of Indians no person not a citizen or member of a tribe, or belonging to the exempted classes, can be lawfully within the limits of the country occupied by these tribes without their permission, and they have the right to impose

the terms upon which such permission will be granted. 23 Op. 214.

**70. Same—Indian licenses or taxes.**—The provisions of the act of June 28, 1898 (30 Stat. 495), for the organization of cities and towns in said Indian country and the extinguishment of Indian title therein, have not yet been consummated, and it is still Indian country. This act does not deprive these Indians of the power to enact laws with regard to licenses or taxes, nor exempt purchasers of town or city lots from the operation of such legislation. *Ib.*

**71. Same—Notice.**—Purchasers of lots do so with notice of existing Indian treaties and with full knowledge that they can only occupy them by permission from the Indians. Such lands are sold under the assumption that the purchasers will comply with the local laws. *Ib.*

**72. Same—Ejection of trespassers.**—Sections 2147 to 2150, inclusive, of the Revised Statutes, expressly confer the right to use the military forces of the United States in ejecting trespassers upon Indian lands, and the grant of this power carries with it the duty of its exercise. *Ib.*

**73. Same—Duty of the Department of the Interior.**—It is the duty of the Department of the Interior to remove all classes forbidden by treaty or law who are within the domain of the Five Civilized Tribes without Indian permission, to close all businesses which require permit or license and are being conducted without the same, and to remove all cattle which are being pastured on said land without Indian permit or license. *Ib.*

**74. Sheep** are "cattle" within the meaning of section 2117, Revised Statutes, which imposes a penalty for driving any stock, etc., to range and feed on Indian lands without the consent of the tribe. 18 Op. 91.

**75. Seizure.**—Property, consisting of hunting traps, etc., seized by the military under the provisions of section 2137, Revised Statutes, which prohibit hunting on Indian lands, should, as soon as practicable, after report of seizure to the United States attorney, be placed in the custody of the proper civil officers. 18 Op. 555.

**76. Same.**—Section 5388, Revised Statutes, which imposes a fine for timber depredations upon the public lands of the United States,

makes no provision for seizure of property belonging to a wrongdoer. *Ib.*

**SEIZURES.** See also INDIAN TERRITORY.

**TRESPASSES ON RESERVATIONS.** See INDIANS, 25-30.

### c. Claimants.

**77. Langford's claim to land within the Nez Percé Indian Reservation.**—The title of the American Board of Commissioners for Foreign Missions to the missionary station within the limits of the Nez Percé Indian Reservation, derived under the acts of August 14, 1848 (9 Stat. 323), and March 2, 1853 (10 Stat. 172), (assuming that a title passed to said board by virtue of those acts) was then, and has ever since continued to be, subject to the Indian right of occupancy in the Nez Percé tribe of Indians; and until this Indian right is extinguished, the present holder of that title has no right, merely by virtue of such title, to enter upon and take possession of the premises. 14 Op. 568.

**78. Same.**—Langford, who claimed title to the tract of land included by said station, as assignee of said board, recovered judgment by default in the territorial court in an action to recover possession of the premises brought against an Indian agent occupying the same, and obtained actual possession thereof under a writ issued upon said judgment: Held that the judgment determined nothing adverse to the Indian right; that the writ founded on such judgment was ineffectual to give Langford legal possession of land to which the Indian right still adheres; and that in entering upon the reservation thereunder he was simply an intruder, and may be summarily removed therefrom in the mode provided by section 2118 of the Revised Statutes. *Ib.*

**79. Same—Compromise.**—Opinion of May 3, 1875 (14 Op. 569), as to the rights of claimant, William G. Langford, in 640 acres of land within the Nez Percé Indian Reservation in Idaho Territory, reaffirmed; and Advised that he has no such possessory interest in such land as would warrant the Interior Department in accepting the compromise proposed. 17 Op. 306.

**80. Same.**—An allotment to individual members of the Nez Percé tribe of Indians under the allotment act of 1887 (24 Stat. 388) of 640 acres of land at the mouth of

the Lapwai, in Idaho, now included in the reservation of that tribe and occupied by it, would not terminate the Indian right of occupancy and vest the right of immediate possession in one William G. Langford, who claims title through a grant of Congress to the missionary society that formerly occupied a station on that tract. 20 Op. 42.

81. *Same.*—The Indian right of occupancy is the right to enjoy the land forever, with the right of alienation limited to one alienee, the United States, or to such persons as the United States, in its capacity of guardian over the Indians, may permit. 20 Op. 48.

82. *Same.*—A right to land which is subject to the Indian right of occupancy is subject to the possibility and probability of the Indians reaching such a state of civilization as to make necessary an allotment of that right. *Ib.*

83. *Same.*—A mere partition of the Indian right of occupancy among the members of the tribe is no injury to Langford's title to the ultimate fee, if in fact he has any such title. *Ib.*

84. *Boysen's right of selection—Shoshone Indian lands.*—The act of March 3, 1905 (33 Stat. 1016), which amends and ratifies an agreement with the Shoshone Indians for the cession of lands, does not, by Article II thereof (p. 1020), confer upon Asmus Boysen the right to make a selection of the 640 acres of land therein referred to, within the unceded or diminished reserved lands of those Indians. 25 Op. 524.

85. *Same.*—That act does not confer upon Boysen the right to make examinations and selections within the ceded portion of the reservation outside the tract covered by the rease formerly held by him. *Ib.*

86. *Same.*—The act confers upon Boysen the right to prospect for and to locate lands bearing minerals other than coal. *Ib.*

87. *Same.*—The Attorney-General declines to express an opinion upon the question of the propriety of the Secretary of the Interior permitting Boysen to go upon the reservation and make examinations prior to the completion and approval of the surveys of the ceded portion, it not being within his province to pass upon the propriety of the exercise by the Secretary of the Interior of his official discretion. *Ib.*

CLAIMS OTHER THAN FOR LAND. *See* INDIANS, V.

d. *Sale, Distribution of Fund, etc.*

88. *Eastern Miami—Distribution of fund for cession of lands where claimants shared in Western Miami's fund.*—The children of Thomas F. Richardville, a Miami Indian, of Indiana, are entitled to share with other persons upon the roll of the Eastern Miamis equally, and without deduction, in the distribution of the fund (\$221,257.86) appropriated by the act of March 3, 1881 (21 Stat. 433), for the payment of the Miami Indians of Indiana, notwithstanding they have already received unlawfully, as alleged, from the Western Miami's fund. 17 Op. 381.

89. *Miamis—Sale of lands—Distribution of proceeds—Who entitled.*—The lands which have been or are to be sold and the proceeds distributed by the act of May 15, 1882 (22 Stat. 63), were set apart for the sole benefit of the Miami tribe of Indians, meaning thereby those who at the time of the survey of the reservation had emigrated and settled on the lands. 17 Op. 410.

90. *Same.*—This class of Miamis only are entitled to the proceeds of the sales of the residue mentioned in the second article of the treaty of June 5, 1854 (10 Stat. 1093), being the same lands referred to in section 3 of the act of May 15, 1882. *Ib.*

91. *Same.*—Those individual Miamis or persons of Miami blood who are named in the corrected list referred to in the Senate amendment to the fourth article of the treaty of June 5, 1854, and their descendants, have no right to or interest in the said residue or the proceeds of the sales thereof. *Ib.*

92. *Approval of sale of inherited Indian allotment lands—Secretary of the Interior.*—The courts for the northern district of the Indian Territory have no jurisdiction or power to decree partition and sale of an inherited Indian allotment covered by a patent without the approval of the Secretary of the Interior, whose authority to approve or disapprove such sales is not disturbed by section 2 of the act of April 28, 1904 (33 Stat. 573). 25 Op. 532.

93. *Same.*—The difference between a Quapaw allotment and others is that title is not given to the United States in trust in the case of the Quapaws. *Ib.*

SALE OF LAND IN KANSAS. *See* KANSAS 9.

94. **Compensation for lands taken by railroad.**—The President has power to direct, by an Executive order, the manner in which compensation shall be ascertained and determined for property taken or destroyed in the construction of the **Missouri, Kansas and Texas Railway** through the reservation of the **Chickasaw and Choctaw** tribes of Indians. 17 Op. 265.

e. *Lease.*

95. **Mining leases — Approval.** — *Advised* that certain mining leases made by citizens of the **Choctaw Nation of Indians**, in the Indian Territory, and the **Osage Coal and Mining Company**, a Missouri corporation, for the mining of coal, etc., in said territory, are not such as may properly receive the approval of the Secretary of the Interior under existing laws. 18 Op. 486.

96. *Same.*—The inhibition contained in section 2116, Revised Statutes, has the same application to individual Indians that it has to Indian nations and tribes. *Ib.*

97. The lands lying in the "**Cherokee Strip**" which are leased to whites are not lands of the United States within the meaning of section 5388, Revised Statutes, which penalizes the cutting or destroying of timber on the lands of the United States. 18 Op. 555.

98. **Interior Department can not authorize Indians to lease their lands.**—There is no law empowering the Interior Department to authorize Indians to lease their lands for grazing purposes. 18 Op. 235.

99. *Same.*—Neither the President nor the Secretary of the Interior has authority to make a lease, for such purposes, of any part of an Indian reservation; nor would their approval of any such lease made by Indians render it lawful and valid. *Ib.*

100. The **Cherokee Nation of Indians** can not make a valid lease of their lands without the consent of the Government. Opinion of July 21, 1885 (18 Op. 235), reaffirmed. 19 Op. 499.

101. An Indian allottee, under the act of February 8, 1887 (24 Stat. 388), can not lawfully lease or rent the whole or any part of his allotment, either with or without the approval of the Secretary of the Interior. 19 Op. 559.

102. **Lease of Cherokee mineral lands—Secretary of the Interior.**—An instrument dated July 9, 1901, purporting to be a mineral lease

from a Delaware Indian of certain lands in the Indian Territory, was void at its inception, as the power to make such a lease was, at that time, vested exclusively in the Secretary of the Interior. Act of June 28, 1898, secs. 13, 16 (30 Stat. 498). 25 Op. 168.

103. *Same.*—This authority was taken from the Secretary of the Interior by section 73 of the act of July 1, 1902 (32 Stat. 727), and it is now impossible for him to give validity to the lease, either in whole or in part. *Ib.*

104. *Same.*—Under section 72 of the act of July 1, 1902 (32 Stat. 726), **Cherokee citizens** have the power, with the approval of the Secretary of the Interior, to lease their allotments, when selected, for mineral purposes. *Ib.*

f. *Contracts—Coal Mines.*

105. *Advised*, that the contract relating to certain coal mines at **Savannah, Choctaw Nation**, between **Mrs. A. G. Ream** and her husband and the **Atoka Coal Mining Company**, dated November 3, 1883, be considered as in full force for the period for which it was executed and approved by the Commissioner of Indian Affairs and Secretary of the Interior, notwithstanding it does not appear affirmatively that the agreement was before the Choctaw and Chickasaw court in any manner. 18 Op. 242.

LEASE OF COAL AND MINERAL LANDS. *See* INDIANS, 95, 102–104.

g. *Taxation.*

106. **Exemption.**—Lands entered and patented to Indians under the provisions of section 15 of the act of March 3, 1875 (18 Stat. 420), before the act of July 4, 1884 (23 Stat. 76), became a law, are exempt from taxation for a period of five years from the date of the patent issued therefor. 19 Op. 161.

107. *Same.*—Under act of 1884.—The said act of July 4, 1884, is supplementary to the said act of March 3, 1875, and its provisions apply to all entries under the latter act for which patents had not issued when the former act took effect. Under the act of 1884 the lands entered are exempt from taxation for a period of twenty-five years from the date of the patent. *Ib.*

108. *Same.*—Under the act of January 18, 1881 (21 Stat. 315), for the benefit of the Winnebago Indians, the land entered is expressly exempt from taxation for twenty years. *Ib.*

109. *Same.*—Lands allotted to Indians under the provisions of the act of February 8, 1887 (24 Stat. 388), are exempt from taxation for twenty-five years. *Ib.*

INDIAN TAX ON HAY. See INDIANS, 161, 162.

#### IV. Timber.

110. *Right to cut and sell merchantable timber standing.*—An Indian allottee of land under the act of February 8, 1887 (24 Stat. 388), does not possess the right to cut and sell merchantable timber standing upon the land, excepting such as it may be necessary to cut in clearing the premises for agricultural or grazing purposes, or to erect suitable buildings thereon. 19 Op. 232.

111. *Same.*—Until the second patent provided for by the fifth section of said act is granted, it is the duty of the Interior Department, by virtue of the legal title remaining in the Government and the trust relation assumed by it, to prevent the cutting of timber except for the above-mentioned purposes, whether the land is or is not within an Indian reservation. *Ib.*

112. *Right to remove and sell dead timber.*—An Indian allottee under the act of February 8, 1887 (24 Stat. 388), may remove and sell dead timber, standing or fallen, from his allotment. 19 Op. 559.

113. *Same.*—Such allottee can not lawfully lease or rent the whole or any part of his allotment, either with or without the approval of the Secretary of the Interior. *Ib.*

114. *Same.*—Nor can he lawfully impart to a third person, by contract, the right to erect upon his allotment mills for the manufacture of lumber or other products. *Ib.*

115. *Same.*—The patent to be first issued to an Indian allottee, under section 5 of the act of 1887, is not intended to convey to him the title of the United States, but is in the nature of a declaration of a trust in the land or a covenant to stand seized of it to the use of the allottee and his heirs until the time shall have arrived when it shall be deemed proper to put an end to the trust by vesting the legal title in him or his heirs. *Ib.* (562).

116. *Same.*—The effect of the allotment and declaration of trust are to place the allottee in possession of the land allotted and to give him a qualified ownership therein. *Ib.*

117. *Same.*—Appropriating and selling dead timber of any kind is not waste at common law or by the law of Wisconsin. *Ib.*

118. *Indians occupying reservations,* the title to which is in the United States subject to their occupancy, have no right to cut and remove the dead and fallen timber thereon for the purpose of sale alone; such timber, where not used by the Indians for fuel or for agricultural or other purposes connected with the occupation of the land, being the property of the United States. 19 Op. 194.

119. *The cutting or destroying of timber on lands which have been patented to individual Indians is not an offense punishable* under the act of June 4, 1888 (25 Stat. 166), amendatory of section 5388, Revised Statutes. 19 Op. 183.

120. *Timber cut on Fond du Lac Reservation—Title to.*—The Attorney-General is unable to express an opinion upon the question as to whether the Indian agent at the La Pointe Agency, Wis., acting under instructions from the Indian Office or Department of the Interior, can dispose of and give valid title to pine timber cut on the Fond du Lac Reservation, Minn., the request therefor being unaccompanied by a statement of the facts involved. 19 Op. 465.

121. *Timber unlawfully cut by trespassers on Fond du Lac Indian Reservation.*—The United States have the absolute ownership of certain timber, originally standing timber, unlawfully cut by trespassers on the Fond du Lac Indian Reservation, in Minnesota, and left lying thereon, notwithstanding the land from which the timber was cut is held in common by the Indian bands, for whom it was reserved, by the ordinary Indian title. 19 Op. 710.

122. *Same.*—The Indians have no interest whatever in said timber, and it in no way appertains to the Indian Bureau or its agents to assume charge thereof. *Ib.*

123. *Same.*—Such timber may be sold for and on account of the United States, but that the sale should be made by the Commissioner of the General Land Office, under the supervision of the Secretary of the Interior. *Ib.*

Opinion of August 23, 1886 (18 Opin. 434), relating to timber cut on public lands, concurred in. *Ib.*

See PUBLIC LANDS, XIII.

**124. Right of railroad to take timber beyond the limits of right of way.**—The Kansas and Arkansas Valley Railway Co. has no right under the act of June 1, 1886 (24 Stat. 73), authorizing its construction through the Indian Territory, to go beyond the limits of the right of way therein prescribed for the purpose of taking timber or other materials for the construction of such railroad. 19 Op. 42.

#### V. Claims, Trust Funds.

##### a. Attorneys' Fees.

**125. Charles Ewing—Osage Nation.**—Upon the facts stated: *Advised* that Charles Ewing, esq., is entitled to the compensation charged in his account for services rendered the Osage Nation of Indians under a contract therewith, dated February 14, 1877, executed in compliance with the law respecting contracts with Indians. 17 Op. 445.

**126. Vann and Adair—For services to Osage Indians.**—Upon the facts presented in the matter of the claim of Vann and Adair for compensation for their services rendered the Osage Indians in 1869 and 1870 respecting the disposal of the lands of the latter: *Advised*, that the payment of the \$50,000 awarded by the Commissioner of Indian Affairs and the Acting Secretary of the Interior in 1874 was a satisfaction in full of any claims that the said Vann and Adair had for their services. 18 Op. 5.

**127. Same.**—An important quasi-judicial joint act in writing can be undone only by another joint act in writing, and that also indorsed upon the original paper itself, or upon one duly attached thereto. *Ib.*

**128. Ellis contract with Pottawatomie Indians.**—The Secretary of the Interior has no power to approve of a contract between E. John Ellis and three attorneys in fact of certain Pottawatomie Indians, where the contract was executed by only two of the attorneys, the signature of the third being added after the services contracted for had been performed. 18 Op. 518.

Opinions of Sept. 9, 1886 (18 Op. 447), Nov. 3, 1886 (18 Op. 497), and Dec. 4, 1886 (18 Op. 517), reaffirmed.

**129. Same—Attorneys in fact—Power to act.**—Under the authority granted to the

agents and attorneys named in the letter of attorney made by certain heads of families and individual members of the Pottawatomie Indians, the powers and duties committed to such agents and attorneys can not be performed by any two of them in the absence or without the concurrence of the third. 18 Op. 447.

**130. Same.**—Opinion of September 9, 1886 (18 Op. p. 447), as to the validity of a certain contract with Pottawatomie Indians, cited and reaffirmed; and *advised* that the approval of such contract by the "business committee of the Citizen Pottawatomes" does not cure the defect therein or authorize the Secretary of the Interior to approve it. 18 Op. 497.

**131. Same.**—Where a contract made by three attorneys in fact of certain persons of the Pottawatomie tribe of Indians with E., an attorney at law, for services of the latter, was not executed by one of the attorneys in fact until some months after it had been executed by the other two and by E., nor until after the services stipulated therefor had been performed by E.: *Held* that the Secretary of the Interior was not authorized to approve the contract or recognize the claim of E. for compensation thereunder. 18 Op. 517.

**132. Same—Curative act of Congress.**—Under the act of April 4, 1888 (25 Stat. 79), which is curative of the defect heretofore mentioned, the Secretary of the Interior is authorized to find that certain services rendered the Pottawatomie Indians were contracted for in good faith by persons empowered to represent said Indians. 19 Op. 134.

**133. Same.**—The act of April 4, 1888 (25 Stat. 79), not only validated the contract for services that E. John Ellis had rendered to the Pottawatomie Indians, but also those he should perform in future under it. In other words, it validated the contract for all purposes. 19 Op. 242.

**134. Same.**—The Secretary of the Interior may therefore approve the contract of Mr. Ellis with the Pottawatomie Indians, as recommended by the Commissioner of Indian Affairs. *Ib.*

**135. Loyal Creek claims—Attorneys' fees.**—The attorneys for the Creek Indians in the so-called "loyal Creek claims" are not entitled to the fees mentioned in the Indian appropriation act of March 3, 1903 (32 Stat.

994), until the amount therein appropriated, \$600,000, has been accepted by the Creek Nation in full payment of these claims. 24 Op. 623.

136. *Same.*—This appropriation is in the nature of a compromise of all the loyal Creek claims, the payment of the \$600,000 being conditioned upon its acceptance by said Indians; and if not accepted, there will be no fund available from which to pay said attorneys. *Ib.*

137. *Delaware Indian claims.*—The attorneys for the Delaware tribe of Indians mentioned in the resolution passed by the Delaware Indians in council on October 13, 1904, are entitled to be paid, as therein directed, out of the \$150,000 appropriated by the act of Congress of April 21, 1904 (33 Stat. 222), for services rendered by them in behalf of said Indians. 25 Op. 308.

138. *Same.*—The "writing" executed by the "business committee" of the tribe on October 13, 1904, declaring the \$150,000 to be in full settlement of all claims and demands of the Delaware Indians against the United States, and authorizing the dismissal of all pending actions, conforms to the requirement of the act of Congress of April 21, 1904, and should receive the approval of the President; and the Secretary of the Treasury may disburse the fund in accordance with the terms of the resolution of the Indian council. *Ib.*

139. *Same.*—The proceedings of the Delaware Indian council held on October 13, 1904, were regular, and the motions were carried by a sufficient number of voters, though less than a majority of those present. *Ib.*

140. *Mansfield, McMurray and Cornish—Choctaw and Chickasaw Indian funds.*—The Secretary of the Interior is without authority either to refuse to issue warrants to Messrs. Mansfield, McMurray, and Cornish for the amount fixed by the Choctaw and Chickasaw citizenship court as compensation for services rendered by them to the Choctaw and Chickasaw nations in preventing allotment or disposition of their tribal property to "court claimants," or to delay the issuance of such warrants upon the ground that the amount is excessive, or that proposed legislation may give the right of appeal in some of the cases determined by that court. 25 Op. 320.

b. *Compensation for Sale of Lands.*

141. *Ely Moore claim—Additional compensation for sale of Indian trust lands—Reopening of account.*—Where a special receiver and superintendent, and two special registers and superintendents, appointed to dispose of the trust lands of the Delaware, Kaskaskia, Piankeshaw, Peoria, and Wea Indians presented their claims for such services to the Interior Department, which claims were allowed and payment made to claimants without their protest: *Held* that they thereby acquiesced in the allowance as fair and reasonable and that such acquiescence as much precludes them as the United States from reopening the matter. 18 Op. 167.

142. *Same.*—The fact that the Supreme Court has decided in the case of *U. S. v. Brindle* (110 U. S. 693), that the treaties of 1854 with those Indians clearly authorize a reasonable compensation for similar services, and the jury in that case allowed a higher compensation than was paid claimants, is not a matter requiring special consideration by the Secretary of the Interior. *Ib.*

143. *Same—Opening of settled accounts.*—The provisions of the act of August 7, 1882 (22 Stat. 345), entitled "An act to authorize the auditing of certain unpaid claims against the Indian Bureau by the accounting officers of the Treasury," do not extend to the opening of settled accounts. 18 Op. 223.

144. *Same.*—Upon the facts stated: *Advised* that no action whatever should be taken by the Executive Departments on the claim of Ely Moore and others for additional compensation for selling certain Indian trust lands, without legislation by Congress providing therefor (See 18 Op. 167). *Ib.*

145. *Same.*—Where an account has once been duly adjusted, settled, and closed by the proper officers, upon a full knowledge of all the facts, and no errors of calculation have been made, it can not be reopened in the absence of statutory authority. *Ib.*

146. *Same.*—The mere circumstance that the finding of the jury differs from the previous determination of the Secretary of the Interior, upon the question of what was a fair compensation for the service of selling the Indian trust lands, is not sufficient ground to authorize the reopening of an account settled

in accordance with such determination, with a view to a readjustment of it in accordance with such finding. *Ib.*

*c. Payment—Trust funds.*

**147. Payment of loyal Creek claims.**—The money appropriated by the act of Congress of March 3, 1903 (32 Stat. 996), for the payment of the so-called "loyal Creek claims" should be paid, in the case of a claimant dying before January 1, 1898, to the distributees of such claimant determined according to the Creek laws; and in the case of a claimant dying on or after that date, to his distributees according to the laws of Arkansas in force in Indian Territory. 25 Op. 163.

**148. Payment.**—Where bonds of the State of North Carolina, held by the Treasurer of the United States for the benefit of certain Indian tribes, were past due and payment thereof demanded and refused: *Advised* that the Secretary of the Interior may authorize the acceptance of a proposition of a third party (a citizen of the State) to pay the principal and accrued interest of the bonds, provided their market value does not exceed their face value with the accrued interest, and provided the acceptance will best subserve the trust. 18 Op. 581

**149. Retention of interest due United States.**—If the United States has advanced for the State any money on account of interest due on said bonds, and there is "any moneys due on any account from the United States to such State," it is the duty of the Treasurer to retain the interest upon such advances from such moneys. Act of March 25, 1876 (16 Stat. 77). *Ib.*

**150. Crow Indians—Annuity fund, interest on balance due.**—The fourth paragraph of the agreement concluded August 27, 1892, with the Crow Indians, pursuant to the act of July 13, 1892 (27 Stat. 137), is valid and of binding force, and modifies the preexisting agreement of December 8, 1890, so as to authorize an allowance of interest in behalf of said Indians upon the balance of the annuity fund provided for in section 8 of said agreement of 1890. 20 Op. 517.

**151. Sale of 5 per cent bonds held in trust.**—The Secretary of the Interior, as trustee for certain Indian tribes, has authority, under the act of April 1, 1880 (21 Stat. 70), to sell

United States 5 per cent called bonds, held in trust for such tribes, in order that the fund may receive the benefit of the premium. 17 Op. 104.

*d. Assignment.*

**152. The assignability of the indebtedness of the United States to the Cherokee Nation** is justified under the general law and under the proviso contained in section 10 of the act of March 3, 1893 (27 Stat. 640). 20 Op. 749.

*e. Certificates of Indebtedness.*

**153. Authority to issue certificates of indebtedness under the treaty with the Kansas Indians** is to be considered as conferred upon the date of the proclamation of the treaty, March 16, 1863, and not before. 17 Op. 200.

**154. Same.**—Such certificates were of two classes, viz: First, those issued to persons who had settled and improved lands within the reservation to an amount not exceeding \$29,421 in the aggregate; second, those issued to persons having claims against the Indians to an amount not exceeding in the aggregate \$36,394.47. *Ib.*

**155. Same.**—Certificates of the second class, issued before the proclamation of the treaty, or before the Senate amendment had received the assent of the Indians, the entire sum of which exceeded the amount allowed by the treaty, are absolutely null and void. *Ib.*

**156. Same.**—Certificates lawfully issued may be distinguished from those unlawfully issued by their respective dates, only those issued after the date of the treaty being recognized, and those only until the amounts limited by the treaty have been reached. *Ib.*

**157. Same.**—Where certificates of the first class which have already been redeemed were issued after the limit prescribed by the treaty had been reached, and a portion of those outstanding were issued before that limit was reached, it is the duty of the Secretary of the Treasury to recognize as lawful such as had been issued within the limit referred to. *Ib.*

**158. Same.**—The Secretary of the Interior is not at liberty to accept in payment of reservation lands any certificates of the first class issued after the limitation upon the amount of such certificates prescribed in the treaty had been reached, nor any certificates of the



second class issued in advance of the ratification and proclamation of the treaty. *Ib.*

LANGFORD'S CLAIM. *See* 77-83.

#### VI. Laws.

159. **Power to enact laws with regard to licenses or taxes.**—The provisions of the act of June 28, 1898 (30 Stat. 495), for the organization of cities and towns in said Indian country and the extinguishment of Indian title therein have not yet been consummated, and it is still Indian country. This act does not deprive these Indians of the power to enact laws with regard to licenses or taxes, nor exempt purchasers of town or city lots from the operation of such legislation. 23 Op. 214.

160. **Same.**—Purchasers of lots do so with notice of existing Indian treaties and with full knowledge that they can only occupy them by permission from the Indians. Such lands are sold under the assumption that the purchasers will comply with the local laws. *Ib.*

161. **Export tax on hay—Cherokee Indians—Secretary of the Interior.**—Under section 16 of the act of June 20, 1898 (30 Stat. 495), the Secretary of the Interior has authority to collect the tribal tax imposed by the laws of the Cherokee Nation of Indians upon the exportation of prairie hay from that nation. 23 Op. 528.

162. **Same.**—But while that section forbids the payment to, or the reception by, any other person than the authorized officers or agents of the Indian Department of the rents or royalties arising from the unappropriated common public lands of that nation, it permits those who, under existing regulations, have taken possession of such lands as would be their share upon allotment, to use the lands thus occupied and to collect and receive the rents therefor. *Ib.*

163. **The question whether or not a Sioux half-breed or quarter blood is an Indian within the meaning of the act of March 2, 1889 (25 Stat. 888), is to be determined not by the common law, but by the laws and usages of the tribe.** 20 Op. 711.

164. **Same.**—The laws or usages of a tribe of Indians are not matters of which judicial notice can be taken, but present questions of fact upon which the Attorney-General can not advise. *Ib.*

165. In the absence of treaty or statutory provision to the contrary, the Choctaw and Chickasaw nations have power to require that citizens of the United States desiring to reside in their territory shall secure permits, and may lay a pecuniary exaction therefor. This power is not subject to revision by any officer or Department of the United States. 18 op. 34.

INTERMARRIAGE. *See* INDIANS, I, c.

LAWS APPLICABLE TO INDIAN RESERVATIONS.

*See* INDIANS, II, a.

#### VII. Courts.

166. **Choctaw and Chickasaw citizenship court—Annulment of judgment of citizenship.**—The annulment by the Choctaw and Chickasaw citizenship court of a judgment of the United States court for Indian Territory affirming a favorable decision of the Commission to the Five Civilized Tribes, upon an application for enrollment as a citizen, as provided in the act of June 10, 1896 (29 Stat. 339), so far deprived the applicant of a favorable judgment as to devolve upon him the duty of transferring his cause to the citizenship court for hearing therein, as provided in section 31 of the act of July 1, 1902 (32 Stat. 641), in order to protect and to preserve his claimed rights. 25 Op. 152.

167. **Same.**—The annulment of such a judgment of the United States court did not revive and put into force and effect the judgment of the Commission admitting an applicant to citizenship, and an enrollment by the Commission based upon such a theory would be a clear violation of the rights of the Indian nations. *Ib.*

168. **An order of a State court attempting to restrain an Indian agent in the removal of trespassers from an Indian reservation is beyond its jurisdiction and void and should be disregarded.** 20 Op. 245.

*See also* INDIANS, 46.

#### VIII. Trade, Interchange, and Residence among.

169. **Section 5 of the act of August 15, 1876, (19 Stat. 200), and the act of July 31, 1882 (22 Stat. 179), in regard to trade regulations and**

residence among the Indians, are not applicable to the Pueblo Indians of New Mexico. 20 Op. 215.

170. Intoxicating liquors.—The introduction of intoxicating liquors within the former Cass Lake Indian Reservation, though sold by a white man upon lands purchased from the heirs of a deceased allottee, is a violation of Article VII of the treaty of February 22, 1855 (10 Stat. 1165), with the Chippewa Indians, and of section 2139, Revised Statutes, as amended (27 Stat. 260; 29 Stat. 506). 25 Op. 416.

171. Same.—In case of a violation of those laws, proceedings may be taken under section 2139, Revised Statutes, as amended, and under section 2140, Revised Statutes. *Ib.*

172. In the absence of treaty or statutory provision to the contrary, the Choctaw and Chickasaw nations have power to require that citizens of the United States desiring to reside in their territory shall secure permits, and may lay a pecuniary exaction therefor. This power is not subject to revision by any officer or Department of the United States. 18 Op. 34.

173. Trespassers on Indian lands.—Under the treaties with the Five Civilized Tribes of Indians no person not a citizen or member of a tribe, or belonging to the exempted classes, can be lawfully within the limits of the country occupied by these tribes without their permission, and they have the right to impose the terms upon which such permission will be granted. 23 Op. 214.

174. Same.—Indian licenses or taxes.—The provisions of the act of June 28, 1898 (30 Stat. 495), for the organization of cities and towns in said Indian country and the extinguishment of Indian title therein have not yet been consummated, and it is still Indian country. This act does not deprive these Indians of the power to enact laws with regard to licenses or taxes, nor exempt purchasers of town or city lots from the operation of such legislation. *Ib.*

175. Same.—Notice.—Purchasers of lots do so with notice of existing Indian treaties and with full knowledge that they can only occupy them by permission from the Indians. Such lands are sold under the assumption that the purchasers will comply with the local laws. *Ib.*

EJECTMENT OF TRESPASSERS. See INDIANS, 63-73.

## IX. Contracts.

176. For Indian supplies.—Where a contract for the delivery of certain supplies at an Indian agency provided, in case an emergency demanded it, for the acceptance of goods inferior in quality to the sample, *held*, (17 Op. 384):

177. That the question whether the necessities of the service compelled acceptance of the articles offered was a question determinable only by the Commissioner of Indian Affairs or his agents, under the direction of the Secretary of the Interior. *Ib.*

178. That while the inspectors were not appointed or designated in the manner indicated by the statutes, the approval by the proper officials of their recommendations was an ample ratification of their appointment. *Ib.*

179. That the time and place of delivery before the goods were distributed were eminently the time and place to determine their relative value. *Ib.*

180. Indian supplies.—The third section of the act of March 2, 1887 (24 Stat. 466), making appropriation for Indian supplies, permits purchases not exceeding \$3,000 in amount to be made in open market without advertisement, in the discretion of the Secretary of the Interior, as often as a "case of exigency" exists, so that the gross purchases keep within the sum appropriated. 19 Op. 95.

181. Transportation of goods for Indian tribes.—The provision in the act of March 3, 1877 (19 Stat. 291), requiring certain contracts for the transportation of goods for Indian tribes, etc., to be let to the lowest bidder after advertisement, does not supersede or repeal the act of March 3, 1875 (18 Stat. 453), and section 5260, Revised Statutes, touching payments to land-grant railroads for services to the Government. 18 Op. 41.

182. Same.—Wherever it is practicable to obtain for the Government the benefit of the act of 1877, without yielding the benefits secured to it by the other legislation referred to, this should be done. *Ib.*

ATTORNEYS' FEES. See INDIANS, V, a.

COAL MINES. See INDIANS, III, f, 105.

ELLIS CONTRACT. See INDIANS, V, 128-134.

**X. Suits.**

**183.** District attorneys are not required under the Indian appropriation act of March 3, 1893 (27 Stat. 612, 613), to represent Indians in suits brought by them in States where they do not reside, founded on claims of inheritance from white persons not members of their tribes. 20 Op. 620.

**XI. Indian Inspectors and Police.**

**184.** Indian Inspectors—Duties—Bond.—Although the general functions and duties of Indian inspectors do not include specifically the disbursement of public money, and these officers are not required by statute to give bond, yet the Secretary of the Interior may lawfully assign to them duties relating to business concerning the Indians other than and in addition to those prescribed whenever the exigencies of the public service require it. 17 Op. 391.

**185.** Same.—Where the particular duty thus assigned to an inspector involves the receipt or disbursement of public money, it is competent to the Secretary to take a bond for the protection of the Government against loss, although such bond may not be required by statute; and the bond would be valid and binding upon both principal and sureties if voluntarily given by the officer. *Ib.*

**186.** Indian police.—The powers and duties of the Indian police authorized by the act of May 15, 1886 (24 Stat. 43), can not be exercised outside of the reservation to which they may be assigned. 18 Op. 440.

**XII. Crimes and Offenses.**

**187.** Murder of one Indian by another on reservation in Oregon.—The State of Oregon has jurisdiction over the case of a murder of one Indian by another, committed upon an Indian reservation within the limits of the State, unless the reservation was excepted out of the State at the time of its admission, or unless its jurisdiction is restricted by the provisions of some treaty with the Indians still in force. 17 Op. 460.

**188.** Murder of an Indian by one of another tribe upon the reservation of a third tribe.—The courts of the United States have no jurisdiction

of a crime of murder committed by an Indian belonging to one tribe against an Indian belonging to another tribe within the reservation of a third tribe which has no law covering the case. The "bad men" clause in a treaty with the tribe to which the murdered Indian belonged does not bring the case within section 2145, Revised Statutes, giving the United States courts jurisdiction over such offense. 17 Op. 566.

**189.** Murder—Jurisdiction—Trial.—An Apache Indian, charged with murdering another Indian of the same tribe on an Indian reservation in Arizona, and in the custody of the territorial authorities, should be delivered up to the authorities of his tribe for trial and punishment. 18 Op. 138.

**190.** In the case of a seizure of cattle by Indians in Indian Territory, alleged to be in violation of the treaties between the Cherokee Nation and the United States: *Advised* that the complainant should seek redress not by application to the executive but to the judicial department of the Government, the courts of the United States for the western district of Arkansas having full jurisdiction of the subject-matter. 19 Op. 173.

**XIII. Immigration.**

**191.** Half-breed Indians emigrating to the United States from Canada are not precluded by existing legislation from retaining the bounty of the United States in addition to that of the Dominion of Canada. 18 Op. 423.

**192.** A body of Indians born and dwelling outside of the territorial limits of the United States, and still maintaining their tribal relations, can not, without authority of Congress, enter upon and occupy our public domain as emigrants. 18 Op. 557.

**193.** The power of the President to set apart a portion of the public domain for the exclusive occupancy of Indians does not include the case of a reservation for Indians not born or commorant in the United States. *Ib.*

**XIV. Indian Treaties.**

Chippewa:

1855, February 22, Article 7 (10 Stat. 1169). See INDIANS, 168 (25 Op. 416).

**Choctaw:**

1830, September 27 (7 Stat. 333). *See* INDIANS, 11 (24 Op. 689).

**Choctaw and Chickasaw:**

1855, June 22, Article 7 (11 Stat. 612).

*See* INDIANS, 63, 64 (17 Op. 134).

1866, April 28, Article 38 (14 Stat. 769-779). *See* INDIANS, 17 (19 Op. 389).

Article 43 (14 Stat. 779).

*See* INDIANS, 64 (17 Op. 134).

**Choctaw and Chickasaw (agreement):**

1902, March 21, Paragraph 41 (32 Stat. 641). *See* INDIANS, 11 (24 Op. 689).

**Kickapoo:**

1862, June 28 (13 Stat. 623). *See* INDIANS, 57 (19 Op. 255).

**Prairie du Chien:**

*See* Sacs and Foxes, treaty of July 15, 1830 (7 Stat. 328).

**Sacs and Foxes, etc.:**

1830, July 15 (7 Stat. 328). *See* INDIANS, 10 (20 Op. 742).

**Shoshone (Agreement):**

1904, April 21, Article II (33 Stat. 1016, 1020). *See* INDIANS, 84 (25 Op. 524).

**Sioux:**

1868, April 29 (15 Stat. 635). *See* INDIANS, 36 (18 Op. 230).

**BOYSEN'S RIGHT OF SELECTION—SHOSHONE INDIAN LANDS.** *See* INDIANS, III, 84-87.

**REMOVAL OF.** *See* INDIANS, 24.

**POWER OF ATTORNEY.** *See* INDIANS, V, 129-131.

**INTERMARRIAGE.** *See* INDIANS, 12-15, 17.

**FISHERY RIGHTS.** *See* INDIANS, 43, 44.

**LOYAL CREEK CLAIMS.** *See* INDIANS, V, 135, 136, 147.

**NATIONAL BANKS.** *See* INDIAN TERRITORY, 14, 15; OKLAHOMA, 1, 2.

**TAXATION OF INDIAN LANDS.** *See* INDIANS, 106-109.

*See also* COMMISSION TO THE FIVE CIVILIZED TRIBES.

**INDIRECT DISMISSAL.**

*See* ARMY, II, c, 125.

**INDORSEMENT.**

*See* NEGOTIABLE INSTRUMENTS.

**INDUSTRIAL PROPERTY.**

*See* SPANISH LAWS.

**INFORMERS.**

The Secretary of the Navy is authorized, by implication, from statutes authorizing him to enter into contracts for certain equipment, to contract with persons for their compensation in furnishing information of frauds practiced upon the Government in the supply of equipment which was not according to contract, the compensation to be regarded as money paid for inspectors' wages, or for detective work. 21 Op. 1.

*See also* CUSTOMS LAW, IX, h; and PUBLIC LANDS, XIII, 56.

**INFRINGEMENT.**

*See* PATENTS, 6, 7, 11-13.

**INJUNCTION.**

1. The United States may avail itself of the remedy by injunction to protect from injury improvements in navigable waters made under authority of Congress. 17 Op. 279.

2. An order of a State court restraining an Indian agent from ousting trespassers from an Indian reservation should be disregarded as without jurisdiction. 20 Op. 245.

3. To restrain trolley railroad from being built over portion of Gettysburg battlefield.—The Secretary of War is authorized by the act of March 3, 1893 (27 Stat. 600), and by the laws of Pennsylvania of 1889, pp. 106-108, to take condemnation proceedings to acquire certain land, being a portion of the battlefield of Gettysburg, over which a trolley railroad is being constructed, and may apply to the court for an injunction to restrain the operation and construction of said railroad. 20 Op. 628.

4. Unauthorized dams.—The remedy of the United States in case of an unauthorized erection of a dam across navigable waters is by injunction, under section 10 of the act of Sep-

tember 19, 1890 (26 Stat. 454), and if the dam has been constructed, also by criminal prosecution. 21 Op. 518.

5. No injunction or action for damages for the infringement of a patent will lie against the Government. 21 Op. 96.

6. Infringing patent.—A contractor manufacturing certain supplies for the United States under an alleged infringing patent may be restrained by injunction from manufacturing or using such articles prior to a determination of the question of infringement by the courts. 21 Op. 96.

*See also* CALIFORNIA DÉBRIS COMMISSION, 5, 6; CONTRACTS, 145.

### INSANE ALIEN IMMIGRANTS.

*See* IMMIGRATION, IV, 49–50.

### INSPECTION.

OF MEAT. *See* DEPARTMENT OF AGRICULTURE, VIII.

OF STEAM VESSELS. *See* STEAMBOAT-INSPECTION SERVICE.

INSPECTION CARDS. *See* DIPLOMATIC AND CONSULAR SERVICE, 19, 20.

INSPECTION CERTIFICATES. *See* DIPLOMATIC AND CONSULAR SERVICE, 4.

### INSPECTORS.

OF CUSTOMS. *See* CUSTOMS LAW, II, f.

OF STEAM VESSELS. *See* STEAMBOAT-INSPECTION SERVICE.

### INSPECTOR-GENERAL'S DEPARTMENT.

*See* ARMY, 48; WAR DEPARTMENT, 109–113.

### INTEREST.

1. Interest can not lawfully be paid on a judgment of the Court of Claims against the United States where no appropriation is made for the payment of interest. 20 Op. 423.

2. Where an appeal of the Government in a customs case is dismissed and the order and mandate is silent upon the subject of interest, no interest can be paid or allowed. 20 Op. 408.

3. Where a judgment by the Court of Claims in favor of a claimant was appealed by the United States to the Supreme Court, which court reversed the judgment, and directed the Court of Claims to enter judgment for a larger amount in favor of claimant, interest is not allowable on the latter sum under the provisions of section 1090, Revised Statutes. 18 Op. 548.

4. Same.—Only such judgments of the Court of Claims as have been appealed from to the Supreme Court and affirmed by the latter are interest-bearing under that section, and they become interest-bearing from the date of their presentation in good faith for payment. *Ib.*

5. Same.—*Seem* that a presentation made by a claimant who afterwards takes an appeal from the judgment is of no avail. *Ib.*

6. The United States are under no obligation to allow interest on the awards made by the Florida judges in cases of claims of Spanish subjects under the ninth article of the treaty with Spain in 1819. 17 Op. 644.

7. No authority exists for the payment of interest upon refunds made in conformity with judgments contained in cases of appeal under section 15 of the customs administrative act of June 10, 1890 (26 Stat. 131). 20 Op. 238.

8. Due the United States.—The North American Commercial Company is liable to the United States for interest upon the several sums overdue for the years 1894–1897, inclusive, on account of taxes, rental, and bonus under its lease of the Pribilof Islands from the United States. 22 Op. 172.

9. Same.—Where money is due and payable on a contract at a specific time and is withheld, the creditor is entitled to demand and receive interest at the rate prevailing in the forum where suit is brought, except as against the Government of the United States and sovereign States. *Ib.*

10. Same.—In an action for use and occupation or for mesne profits, where the recovery is of a sum in the nature of rent, interest is allowed on each annual sum from the end of the year. *Ib.*

11. The claim of the State of New York for reimbursement of the interest paid by that State on money borrowed and expended in enrolling, subsisting, clothing, etc., its troops employed to aid in the suppression of the rebellion is not allowable under the provisions of the act of July 27, 1861 (12 Stat. 276). 17 Op. 595.

12. *Same.*—To construe the provisions of that act so as to include a claim for interest thus paid would be giving them a meaning much broader than that which has in practice been given other legislation of like character, or than seems to be warranted by any sound rule of interpretation. *Ib.*

13. *Direct taxes.*—Interest and penalties are collections within the meaning of the act of March 2, 1891 (26 Stat. 820), and should be repaid the same as the direct taxes authorized by that act; but costs attending the collection should not be repaid, as such funds never came into the Treasury of the United States. 20 Op. 412.

14. *Same.*—Where, under the act of June 7, 1862 (12 Stat. 422), redemptions of lands held for direct taxes were made, the party in interest should be refunded the tax, penalties, and interest paid by him for such redemption. *Ib.*

15. *Same.*—The act of 1891 supersedes the provisions in the act of March 3, 1883 (26 Stat. 595), in regard to the surplus proceeds of lands sold for direct taxes, and it is now the duty of the Secretary of the Treasury to repay not merely the surplus but the entire amount collected under that law and brought into the Treasury. *Ib.*

#### INTERMARRIAGE.

*See* INDIANS, 12–15, 17.

#### INSURANCE POLICY.

*See* INTERNAL REVENUE, 95–98.

#### INTERPRETATION OF STATUTES.

*See* Statutory Construction; and Table of Statutes cited, p. 531.

#### INTERPRETER TO LEGATION TO CHINA.

*See* CHINESE SECRETARY.

#### INTERNAL REVENUE.

##### I. Officers, 1–7.

##### II. Taxes and Regulations.

- a. *In General*, 8–13.
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##### III. Abatement, Allowance, Redemption, Refund—Compromise.

- a. *Abatement, Refund, etc.*, 124–129.
- b. *Compromise*, 130–133.

##### IV. Enforcement—Penalties, 134–143.

##### V. Warehouses—Withdrawal from Bond, 144–155.

##### I. Officers.

1. The Commissioner of Internal Revenue is not authorized to issue, prior to April 1, 1891, the licenses to produce sugar provided for by paragraph 233 of that act, to persons desiring to avail themselves of the bounty provisions of that statute. 20 Op. 2.

2. The Commissioner of Internal Revenue has authority, with the approval of the Secretary of the Treasury, to make regulations looking to the redemption of unused documen-

**tary stamps** issued under the war-revenue act of June 13, 1898. 22 Op. 568.

3. **Same.**—In the absence of such rules, the Commissioner of Internal Revenue may cause such unused stamps to be redeemed. *Ib.*

4. **Reconsideration of claim for taxes after judgment.**—The Commissioner of Internal Revenue has no power, under section 3220, Revised Statutes, to reopen and allow the claim of the New York and Cuba Mail Steamship Company for taxes voluntarily paid under a mutual mistake of law, as the judgment of the Supreme Court (200 U. S. 488), in sustaining the ruling of the Commissioner that the company had no legal claim against the Government, deprived the Commissioner of jurisdiction to again entertain the claim. 25 Op. 605.

5. **Same.**—The Commissioner may, however, allow similar claims where no legal protest has been made; but such cases must arise under a misapprehension of fact and not of law. *Ib.*

**ADOPTION OF THE HUNTER BROOKS CIGAR STAMP.** See 11, 12.

6. **Collector of internal revenue — Suspension.**—The President has the undoubted right during a recess of the Senate, to suspend from office a collector of internal revenue, with or without cause, and to designate some one else to perform the duties of that office. (Sec. 1768 Revised Statutes.) 18 Op. 318.

7. **Storekeeper — Compensation.**—Under the act of August 15, 1876 (19 Stat. 143, 152), an internal-revenue storekeeper is entitled to receive a *per diem* compensation only while "rendering actual service." Hence during such time as he is not assigned to duty and does not perform duty no compensation can be allowed him. 18 Op. 398.

## II. Taxes and Regulations.

### a. In General.

8. **The free importation of articles of Porto Rican origin** which have been exported to foreign countries and thence imported into the United States does not affect the question of the payment of the internal-revenue tax provided for in section 3 of the Foraker act of April 12, 1900 (31 Stat. 77). 24 Op. 55.

9. **Tobacco grown in Porto Rico** after the cession of that island to the United States and

brought into this country for warehousing, and afterwards exported to Canada and thence returned to the United States, is subject to the internal-revenue tax provisions of section 3 of the act of April 12, 1900 (31 Stat. 77). 24 Op. 612.

10. **Internal-revenue stamps** should be affixed under the war-revenue act of 1898 to certificates or other instruments issued by any Department or officer of the Federal Government at the request of private persons and for private use, such stamps to be furnished by the party applying therefor, and should be affixed before delivery of the document. 22 Op. 134.

11. **Form, use, and cancellation of stamps.**—The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may adopt the device known as the Hamilton-Brooks cigar stamp, and prescribe regulations for its use, cancellation, and destruction, in accordance with the design of its inventor, if deemed expedient. 17 Op. 111.

12. **Same.**—Any failure to use, cancel, and destroy such stamp, as directed by such regulations, would make the party chargeable with the failure amenable to the penalties existing March 1, 1879 (20 Stat. 351), as to the stamps then in use. *Ib.*

13. **Same.**—Refusal or neglect to detach coupons.—A dealer in cigars would not be liable to any penalty under existing laws (see secs. 3397 and 3406 R. S.) for refusal or neglect to detach the coupons from the stamp known as the Hamilton-Brooks stamp, at the time contemplated by that device, should such stamp be adopted in pursuance of the provisions of section 3446 Revised Statutes, as amended by section 18 of the act of March 1, 1879 (20 Stat. 351). He would under existing laws incur liability for not destroying the stamp when the box is emptied, but not for refusal or neglect to do so previously thereto. 16 Op. 443.

### b. Exemptions.

14. **An excess-baggage receipt** issued by a railroad company to a passenger for excess weight of baggage does not require a stamp under Schedule A, "Express and Freight," of the war-revenue act of June 13, 1898 (30 Stat. 459). 22 Op. 246.

15. Rebate checks which are given by a railroad company to passengers who purchase their tickets from the conductor aboard the train do not require a stamp under the provisions of the war-revenue law (30 Stat. 448). 22 Op. 248.

16. Express companies issuing money orders and travelers' checks are not taxable as brokers under the war-revenue act of June 13, 1898 (30 Stat. 448). 23 Op. 139.

17. Money and Merchandise carried by the Adams Express Company for the Pennsylvania Railroad Company over the lines of the latter, free of charge, under a contract between the two companies, do not require a bill of lading or manifest under the provisions of the war-revenue law, and, if given, it is not liable to the stamp tax provided for under the head of "Express and Freight" in the war-revenue act (30 Stat. 459). 22 Op. 252.

18. Uncompounded medicinal drugs or chemicals, no matter how put up, or what is claimed for them, are exempt from tax by section 20 of the act of June 13, 1898 (30 Stat. 456). 22 Op. 272.

19. The act does not apply to such medicinal articles or preparations as are put up under pharmaceutical or classifying names for use of physicians in their practice, or pharmacists or druggists in their trade. *Ib.*

20. A paper or instrument stipulating that certain securities or other property shall be held as indemnity or as a basis of credit, or a guaranty generally, without specifying particular property as security for the payment of a definite and certain sum, is not liable to tax under the provisions of the war-revenue act (30 Stat. 459). 22 Op. 218.

21. Such a paper, being a pledge of property for the payment of a debt, is not to be construed as a power of attorney and stamped as such, as it only authorizes the holder, in case of default, to make the securities available for the purposes for which they were deposited. *Ib.*

22. Official papers, instruments, and certificates made or issued by officers of the United States in the discharge of their official functions and for the use and benefit of the Government are exempt from tax under the war-revenue act of 1898 (30 Stat. 448). 22 Op. 134.

23. Same.—Checks or drafts issued by the disbursing officers of the United States upon

Government funds on deposit, in payment of its obligations or dues, are exempt from this tax. *Ib.*

24. Cigars shipped from the Philippine Islands to the United States are not subject to internal-revenue tax under section 3402, Revised Statutes. 24 Op. 120.

25. Same.—Prior to the passage of the act of July 1, 1902 (32 Stat. 691), the Philippine Islands were "within the exterior boundaries of the United States" within the meaning of section 3448, Revised Statutes, and subject to its provisions; but since its passage the provisions of that section have been inoperative in those islands, section 1 of that act providing in effect that the laws of the United States shall not apply to the Philippine Islands. No internal-revenue tax therefore can be imposed under the laws of the United States on cigars shipped into this country from the Philippine Islands. *Ib.*

#### c. Special Taxes—Banks and Bankers.

26. Tax on capital and deposits of banks and bankers.—By operation of the repeal provision in the act of March 3, 1883 (22 Stat. 488, 526), the taxes on capital and deposits of banks, bankers, and national banking associations, imposed by the internal-revenue law in force at the time of the passage of that act, are not assessable and collectible on the capital and deposits of banks and bankers for the interval between December 1, 1882, and March 3, 1883, nor on the capital and deposits of national banking associations for the interval between January 1 and March 3, 1883. 17 Op. 539.

27. Same.—The words "any right accruing," etc., used in section 13 of the said act, do not include such taxes accruing at the date of the repeal, there being, as to them, no right *in esse*. It is the accruing right, not the accruing tax, that is saved. *Ib.*

28. Same.—The provisions of section 13, Revised Statutes, saying "any penalty, forfeiture, or liability incurred" under the statute repealed, do not extend to the taxes referred to; since, as to them, there are no "liabilities incurred" at the date of the act of March 3, 1883. *Ib.*

29. The tax on State banks imposed by section 19 of the act of February 8, 1875 (18 Stat. 311), applies only to promissory notes and not to other negotiable or quasi-negotiable paper. 20 Op. 681.



30. If there is any doubt as to the meaning of a statute imposing this tax, the doubt must be resolved in favor of exemption. *Ib.*

31. A clearing house certificate upon which neither the clearing house nor the bank could be sued in an action at common law and a money judgment recovered by proving and introducing the paper alone without further evidence, is not a note within the meaning of the statute. *Ib.*

32. Notes in circulation.—Notes of a national banking association, signed by the proper officers, are not "notes in circulation" within sections 5214 and 5215, Revised Statutes, so long as the bank has never parted with any interest in or control over them, and may either issue them or cause them to be canceled or destroyed at its option. 20 Op. 695.

33. Tax on circulation.—A national bank paying out on checks and otherwise the notes of a bank chartered in a foreign country is subject to tax of 10 per cent under sections 19 and 20 of the act of February 8, 1875 (18 Stat. 311), upon the total amount of all notes which it has received and used as a circulating medium. 20 Op. 530.

34. Circulation.—Section 5214, Revised Statutes, providing a tax upon national banks based upon the average amounts of its "notes in circulation" means instruments binding the banks to the holder or holders as promises to pay. 20 Op. 704.

35. Same.—Bank notes signed and actually paid out over the counter, or otherwise so dealt with as to become liabilities of the bank, are notes in circulation. *Ib.*

36. Same.—Notes merely held in the vault of the bank, whether signed or unsigned, and notes so signed and held, and carried on the books of the bank, are not notes in circulation. *Ib.*

37. Same.—Notes that have been obligations of the bank, but cease to be so, returned and remaining in the bank for whatever period, are not during such period its notes in circulation. *Ib.*

38. Circulation.—Banks of the United States are liable for the tax of 10 per cent on the circulating notes issued by banks in Canada, for circulation in Canada, which have passed over the line and been received by such United States banks and paid out by them within the United States. 21 Op. 557.

39. Same.—The intent and meaning of section 20 of the act of February 8, 1875, was to apply the tax to the amount of the circulating notes issued by any of the persons or corporations named in the statute, and used by the banks and other persons therein named. *Ib.*

40. Same.—What effect section 20 could possibly have except to impose a tax on the amount of other notes than its own, paid out by a bank as circulation, is difficult to see. *Ib.* (563.)

41. Same.—In commenting upon the case of *National Bank v. United States* (101 U. S. 1), holding section 3413, Revised Statutes, to be unconstitutional, Solicitor-General Conrad said: "Had this decision been made before the passage of the act of February 8, 1875, Congress might have deemed it unnecessary to amend section 3413, Revised Statutes, by adding the words 'used for circulation,' for the Supreme Court, in that opinion, very clearly indicated that the banker who pays out notes thereby helps to keep up their use as a circulating medium." *Ib.* (561.)

42. An order on a State bank payable in merchandise silver bullion, which can not be used as money without danger of total loss to whoever may take it, is not subject to the tax imposed by sections 19 and 20 of the act of February 8, 1875 (18 Stat. 311). 21 Op. 336.

43. A proposed issue of interest-bearing bonds by the county commissioners of Floyd County, Ga., will not conflict with the banking laws of the United States. 21 Op. 70.

44. Undivided profits—Surplus.—The undivided profits of a bank are not surplus, and can not be estimated under the war-revenue act of 1898 (30 Stat. 448) as a part of the bank surplus. 22 Op. 320.

45. Capital—Subject of taxation.—The capital of a bank and other funds belonging to it which, by law or the action of the bank authorities, assume the character of capital, and which the bank uses in carrying on its business, is what the law has in view as the subject of taxation. *Ib.*

46. Surplus.—The term "surplus," as applied to banks, includes not only the amount set apart as a minimum surplus, under the national banking act, but also such amount as has been set apart by a vote of the directors or other authorized action of the bank

to strengthen the capital, and is thus held out to the public as a part of its banking capital. *Ib.*

47. State banks are taxable upon the amount of their capital, together with such additional surplus or funds belonging to them as may be set apart either by law or by the action of the bank authorities and used in carrying on the general business of the bank. *Ib.*

48. Tax, how computed.—The tax referred to in section 2 of the act (30 Stat. 448) should be computed on the basis of the capital and surplus for the fiscal year preceding the time at which the assessment is made. *Ib.*

49. Profit is the gain made upon any business or investment when both the receipts and payments are taken into account. *Ib.*

50. Bankers' surplus.—The "undivided profits" or "profit and loss" accounts of banking institutions are not taxable as surplus under section 2 of the war-revenue act of June 13, 1898 (30 Stat. 448). 23 Op. 341.

51. Same.—In enacting this law Congress meant to tax only the capital of a bank in its strict technical sense under the banking laws, and in taxing surplus it meant the fund formally set apart by the authorized officers of the bank as surplus, and not the undivided profits of the institution. *Ib.*

#### d. Tobacco, Cigars, etc.

52. Refuse scraps and scrapings of tobacco.—By section 61 of the act 20th of July, 1868 (15 Stat. 125), entitled "An act imposing taxes on distilled spirits and tobacco, and for other purposes," refuse scraps and scrapings of tobacco are classed as manufactured tobacco. 17 Op. 646.

53. Cigars shipped from the Philippine Islands to the United States are not subject to internal-revenue tax under section 3402, Revised Statutes. 24 Op. 120.

54. A doubt existing as to the right of the Government to enforce section 10 of the act of July 24, 1897 (30 Stat. 206), which excludes from packages of manufactured tobacco, cigars, cigarettes, etc., everything except the wrapper, label, internal-revenue stamps, and the tobacco or cigarettes, etc., inclosed therein, a test case should be presented to the courts for judicial determination of the question involved. 22 Op. 181.

#### e. Spirituous and Fermented Liquors— Liquor Dealers.

55. The word "liquors" in paragraph 10 of the tariff act of October 1, 1890 (26 Stat. 614), relating to warehouses for the manufacture of "medicines, preparations, \* \* \* and other liquors manufactured wholly or in part of domestic spirits, intended for exportation," does not include whisky. 20 Op. 699.

56. Fermented liquors—Stamp tax.—Under section 1 of the act of June 13, 1898 (30 Stat. 448), the whole tax upon a barrel of not more than 31 gallons of beer, lager beer, ale, porter, and other similar fermented liquors is \$1.85, to be paid by stamps attached to the barrel, though the stamps attached to such barrel indicate a tax of \$2. 23 Op. 170.

57. Same.—In all cases where more than 85 cents per barrel has been collected in addition to the \$1 tax which had theretofore been paid, such collection was erroneous. *Ib.*

58. Additional tax of \$1.—Retail liquor dealers are not required to pay the additional tax of \$1 imposed by the war-revenue law (30 Stat. 448) on fermented liquors purchased by them prior to June 14, 1898, and held in stock by them on that day. 22 Op. 279.

59. Same.—The place of business of a retail dealer in any commodity can not properly be termed a warehouse. *Ib.*

60. Same.—A warehouse is a place for storing goods, not for selling them at retail. *Ib.*

61. Beer stored in warehouse upon which both the brewer's tax and the dealer's tax has been paid.—Under the war-revenue act of June 13, 1898 (30 Stat. 448), beer, which before that date had been transferred by a brewing company to itself as a wholesale and retail dealer, said company having theretofore paid the tax of \$1 per barrel as brewer, and also the special tax as wholesale and retail dealers, is not subject to the additional tax imposed by that act on beer, etc., stored in warehouses, or removed for consumption. 23 Op. 227.

62. Same.—This tax is on beer stored or removed by the brewer and not by the wholesale or retail dealer. *Ib.*

63. Same.—The warehouse is that of the brewer and not the place where the dealer has it stored. *Ib.*

64. No allowance is made by the act of June 30, 1864 (13 Stat. 223), for leakage of spirituous liquors while stored in bonded warehouses. 17 Op. 500.

65. Spirituous and fermented liquors produced in the Indian Territory.—Internal-revenue taxes on distilled spirits, fermented liquors, tobacco, etc., produced in the Indian Territory, and special taxes on the manufacture and sale of those articles in that Territory, may lawfully be collected within the same. 18 Op. 66.

66. Sale of spirituous liquors in the Indian Territory not forbidden.—The Indian title to the lands within the Territory known as Oklahoma having become extinguished, and the lands thrown open to settlement, that Territory has ceased to be "Indian country," and sections 2139 and 2140, Revised Statutes, are accordingly no longer applicable thereto; nor is the sale of spirituous liquors and beer in such Territory forbidden thereby. 19 Op. 306.

67. Same.—Yet, for reasons stated, the Internal Revenue Department may decline to furnish special revenue stamps for the sale of intoxicating liquors within that Territory until Congress shall have time to consider the subject. *Ib.*

68. Same.—Such refusal may be based upon the fact that there are no counties nor legally organized towns whose limits are capable of definition, and therefore such license can not specifically define and describe known places of doing business as contemplated by sections 3240 and 3241, Revised Statutes. *Ib.*

69. Same.—The opinion of May 15, 1889 (19 Opin. 306), does not conflict with the collection of the special tax on retail liquor dealers in the Indian country and Alaska under section 3244, Revised Statutes. 21 Op. 25.

70. The establishment of a distillery in the Indian Territory on lands wherein the Indian title is said to be extinct would be in contravention of the laws relating generally to the Indian country (sec. 2141, Rev. Stat.), and also of section 8 of the act of March 1, 1895 (28 Stat. 697), which applies specially to the Indian Territory. 22 Op. 232.

71. Same.—There is no portion of the Indian Territory wherein the Indian title has become extinct to the extent that it has ceased to be Indian country, or where the prohibition above referred to does not apply. *Ib.*

# *f. Stamp Taxes on Specific Articles.*

## 1. Bills of Lading, Manifest, etc.

72. Transportation of money, securities, etc.—The United States Express Company is not, by reason of its contract with the United States for the transportation of money, securities, etc., relieved of its duty under the war-revenue act of June 13, 1898 (30 Stat. 459), of issuing a bill of lading, manifest, or other receipt with a 1-cent stamp duly attached and canceled, for each such transportation for the Government. 22 Op. 192.

73. Same.—So long as a contractor is taxed uniformly with all others in the same line of business, upon the same transactions, and the tax is levied for proper objects of taxation, he can not complain merely because his compensation or profits under his contract with the Government are thereby indirectly reduced. *Ib.*

74. Money and merchandise carried by the Adams Express Company for the Pennsylvania Railroad Company over the lines of the latter, free of charge, under a contract between the two companies, do not require a bill of lading or manifest under the provisions of the war-revenue law, and, if given, it is not liable to the stamp tax provided for under the head of "Express and freight" in the war-revenue act of 1898 (30 Stat. 459). 22 Op. 252.

75. Same.—The term "accepted for transportation" as used in the paragraph entitled "Express and freight," in the war-revenue act (30 Stat. 459), means goods received from a shipper or consignee other than the carrier itself, and is intended to apply to goods received for transportation in the usual manner by common carriers. *Ib.*

76. Goods transported from United States to Canada or Mexico—Export bills of lading—Stamp tax.—The war-revenue act of June 13, 1898 (30 Stat. 459), requires the payment of a stamp tax of 1 cent, under the clause headed "Express and freight," upon bills of lading, receipts, manifests, and other similar documents issued by railroad companies for the receipt of goods to be transported by rail from any place within the United States to Canada or Mexico; but no tax is payable thereon under the clause relating to goods exported from a port or place in the United States to any foreign port or place. 23 Op. 3.

77. **Same.**—Under the war-revenue act of June 13, 1898 (30 Stat. 459), a 1-cent stamp should be attached to all bills of lading for goods transported from places within the United States to Canada or Mexico. Such bills being in part domestic, given for transportation within the United States as well as for export, may be taxed upon the domestic part regardless of the ultimate destination of the goods. 24 Op. 44.

## 2. Bills and Notes.

78. **Promissory notes.**—The war-revenue act of June 13, 1898 (30 Stat. 459), requires a stamp of the value of 2 cents upon promissory notes for a sum not exceeding \$100, and of 2 cents additional for each \$100 or fractional part thereof in excess of \$100. 22 Op. 218.

79. The tax required upon a mortgage or pledge of stock or property given to secure the payment of a promissory note is governed by the sum secured to be paid, and not by the actual value of the property included in the mortgage or pledge. *Ib.*

80. **Money orders, travelers' checks—Brokers' tax.**—Express companies issuing money orders and travelers' checks are not taxable as brokers under the war-revenue act of June 13, 1898 (30 Stat. 448). 23 Op. 139.

81. **Same.**—Money orders and travelers' checks as at present issued by certain express companies do not come within the legal definition of bills of exchange or checks, but possess more of the characteristics of promissory notes. *Ib.*

82. **Same.**—The issuing of these orders by express companies upon themselves is not a sale of promissory notes. It is merely an incident to their business as carriers, and does not constitute them brokers. *Ib.*

83. The tickets issued by certain ice companies (copies of which are given in the opinion) are not "notes" within the meaning of that term as used in section 19 of the act of February 8, 1875 (18 Stat. 311), and therefore are not subject to the 10 per centum tax imposed by that section. 19 Op. 98.

84. **Same.**—Where a company or corporation made and paid out its own notes in the ordinary course of its business, not intending them to be used for circulation as money or currency, their use as such by other persons after they were paid out, without approval by the maker

of such use, would not subject the maker to the tax. *Ib.*

85. **Same.**—No tax, as such, is imposed on those notes which are prohibited by section 3583, Revised Statutes. The violation of this section is vindicated by fine or imprisonment, or both. *Ib.*

86. The liability of an instrument to a stamp tax, as well as the amount of such tax, is determined by the form and face of the instrument, and can not be affected by proof of facts outside of the instrument itself. 22 Op. 369.

*See also* 89.

## 3. Bonds.

87. Bonds provided for in a mortgage, to be issued or not, as the future action of the mortgagor may determine, are not, under schedule A of the war-revenue act of 1898 (30 Stat. 458), until issued, the subject of taxation or an element in estimating the amount of stamps required for the mortgage. 22 Op. 531.

88. **Same.**—A bond, though prepared and signed, which is still in the possession of the obligor unissued, and which may never be issued, is not a debt or obligation which is liable to taxation under that law. *Ib.*

89. **Same.**—Bonds and notes secured by mortgage.—The resolution of February 28, 1899 (30 Stat. 1390), amending the war-revenue act in respect to mortgages, and bonds and notes secured thereby, requires but one stamp upon the two separate papers which constitute the one transaction, and the stamp, in proper amount, may be affixed to either and canceled, such stamp being for the highest rate required by said papers or either of them. *Ib.*

90. A bond is an obligation in writing and under seal, binding the obligor to pay a sum of money to the obligee. It is sometimes denominated a specialty, being under seal, as distinguished from a simple promise to pay not sealed. 22 Op. 369.

## 4. Charter party.

91. The paragraph of Schedule A under the head of "Charter Party" in the war-revenue law of June 13, 1898 (30 Stat. 460), applies to all vessels registered under the provisions of Title XLVIII, Revised Statutes, and does not apply to vessels enrolled or licensed under Title L. 22 Op. 270.

92. **Same.**—The charter parties of registered vessels sailing between the Atlantic and Pacific coasts of the United States in the coasting trade are, therefore, to be stamped, as provided in Schedule A. *Ib.*

93. The paragraph of the war-revenue act of June 13, 1898 (30 Stat. 460), relating to charter parties, does not apply to vessels engaged in domestic commerce, as the law does not require that their tonnage should be registered. 22 Op. 168.

#### 5. Excess baggage receipts.

94. An excess-baggage receipt issued by a railroad company to a passenger for excess weight of baggage does not require a stamp under Schedule A, paragraph "Express and freight" of the war-revenue act of June 13, 1898 (30 Stat. 459). 22 Op. 246.

#### 6. Insurance.

95. **Insurance policies—Preliminary application.**—The act of June 13, 1898 (30 Stat. 448), requires the stamp to be affixed to the policy of insurance and not to the preliminary application, although such application is expressly made a part of the contract of insurance. 23 Op. 210.

96. **Same—Separate contracts covering consecutive periods.**—Where the application for insurance expressly stipulates that the policy shall embrace four separate contracts, covering four consecutive periods aggregating one year, and shall remain in force after the first insurance period only as continued by further payments of premium, such policy is held to be a policy issued for one year, and the amount of tax to be affixed when the policy is delivered is to be determined by the aggregate of the premiums for the entire year. *Ib.*

97. **Reinsurance policies** need not be stamped under the war-revenue law of June 13, 1898 (30 Stat. 460). 22 Op. 318.

98. **Same.**—The purpose of Schedule A of the war-revenue law (30 Stat. 460), is to tax the policy by which an insurance is made, either life, fire, or marine, and not the reinsurance of such policy. 22 Op. 376.

#### 7. Medicines—Medicinal proprietary articles.

99. **Uncompounded medicinal drugs** or chemicals, no matter how put up or what is

claimed for them, are exempt from tax by section 20 of the act of June 13, 1898 (30 Stat. 456). 22 Op. 272.

100. **Same.**—The act does not apply to such medicinal articles or preparations as are put up under pharmaceutical or classifying names for use of physicians in their practice, or pharmacists or druggists in their trade. *Ib.*

101. **Same.**—The class of medicines taxable under the provisions of the law are such as go to the consumer in the unbroken packages in which they are put up by the proprietor, manufacturer, or compounder, with name and disease and the directions for use without the intervention of a prescription for use by a physician or pharmacist. 22 Op. 272.

102. **Same.**—By the last clause of section 20, above referred to, Congress intended to levy tax upon proprietary medicinal articles, or such as assume the character before the public of proprietary, patent, or trade-mark articles, and such medicinal articles as go from the hands of the proprietor, compounder, or manufacturer so put up in packages as to comport with the manner and style of patent, trade-mark, or proprietary medicines in general. *Ib.*

103. **Same.**—The question as to what is an uncompounded medicinal drug, or an uncompounded chemical, being one of fact and not of law, is to be determined according to the technical meaning that has become attached to it. *Ib.*

#### 8. Money.

104. The term "goods" as used in the paragraph entitled "Express and freight," Schedule A of the war-revenue act of June 13, 1898 (30 Stat. 459), includes money. 22 Op. 178.

#### 9. Mortgage and pledge.

105. The tax required upon a mortgage or pledge of stock or property given to secure the payment of a promissory note is governed by the sum secured to be paid, and not by the actual value of the property included in the mortgage or pledge. 22 Op. 218.

106. **Same.**—A paper or instrument stipulating that certain securities or other property shall be held as indemnity or as a basis of credit, or a guaranty generally, without specifying particular property as security for the payment of a definite and certain sum, is not

liable to tax under the provisions of the war-revenue act. *Ib.*

107. **Same.**—Such a paper being a pledge of property for the payment of a debt, is not to be construed as a power of attorney and stamped as such, as it only authorizes the holder, in case of default, to make the securities available for the purposes for which they were deposited. *Ib.*

108. **Pledge of stock—Stamp tax.**—The depositing with the Girard Trust Company by the Pennsylvania Company, under a written agreement, of certificates of stock of other corporations as a pledge for the performance of its covenant to pay, when due, the interest and principal of certain certificates of indebtedness issued and sold by the former company for the benefit of the latter, constitutes such a pledging of stocks for the future payment of money as to render the transaction taxable under Schedule A of the act of March 2, 1901 (31 Stat. 942), although the power of attorney accompanying the agreement only authorized the transfer of the stock so deposited in case of default by the pledgor, and until such default the pledgor was to retain and exercise all the rights, powers, and privileges belonging or incident to such ownership. 23 Op. 615.

109. **Stock—Puts.**—The written evidence of a transaction called in brokers' parlance a "put," being an agreement on the part of the signer to buy stock, the opportunity to purchase being entirely dependent upon the disposition of the bearer, or the party to whom the paper is given, is not taxable under the war-revenue law. 22 Op. 447.

110. **Same.**—A writing termed a "call," in which the signer agrees to sell the stock described in the paper at the price named, provided the holder of the paper calls upon him within the time specified, is taxable under the first paragraph of Schedule A of the war-revenue law (30 Stat. 458). *Ib.*

111. **Call loans.**—Written or printed agreements between a borrower and a bank whereby all securities deposited as collateral to any loan or indebtedness of the former shall also be held as security for any other liability of the borrower to said bank, whether then existing or thereafter contracted, are not taxable under the head "Mortgage and pledge," in Schedule A of the war-revenue act of 1898 (30 Stat. 461). 23 Op. 53.

112. **Same.**—To be taxable, must describe property pledged and state amount of loan.—In order to render such an agreement taxable, the property pledged must be so definitely described therein as to be capable of identification, and the amount for which it is pledged definitely set forth in the instrument itself, or made certain by reference to some other paper. *Ib.*

113. **Same—Stock hypothecated by delivery only.**—If stock is hypothecated simply by the delivery of the certificates, or is deposited as the basis of credit without a mortgage or other instrument being executed, no tax thereon, collectible by the affixing and cancellation of an adhesive documentary stamp, can be imposed. The provision named does not impose a tax upon anything which is not written or printed. *Ib.*

114. **Same—Taxable if accompanied by any paper or memorandum.**—Stock pledged as security for loans would be taxable under the first paragraph of Schedule A if accompanied by any paper or agreement or memorandum or other evidence of transfer such as is contemplated by the statutes. *Ib.*

#### 10. Warehouse receipts.

115. All receipts given for goods, merchandise, or property held on storage in any public or private warehouse or yard are "warehouse receipts" within the meaning of the war-revenue act of June 13, 1898 (30 Stat. 462), and are subject to a stamp duty of 25 cents. 22 Op. 283.

#### g. Legacy Taxes.

116. The tax provided for in section 29 of the war-revenue law (30 Stat. 464) is upon such legacies and distributive shares arising from personal property as exceed \$10,000 in actual value, and not upon the gross amount of the estate in the hands of the executor or administrator. 22 Op. 298.

117. **Estates of persons not domiciled in the United States at time of death.**—The question as to whether section 29, act of June 13, 1898 (30 Stat. 448, 464), imposes a legacy tax upon the estates of persons who were not domiciled in the United States at the time of death, is not free from doubt. 23 Op. 221.

118. **Refunding of legacy taxes.**—There is no distinction in the meaning of the terms

"vested" in the first paragraph, and "vested in possession or enjoyment," in the second paragraph of section 3 of the act of June 27, 1902 (32 Stat. 406), which provides for the refunding of taxes paid upon legacies and bequests for religious uses, etc., under the act of June 13, 1898 (30 Stat. 464). 24 Op. 98.

119. Same—"Vested"—"Vested in possession or enjoyment."—The two expressions should be given their technical legal significance in each paragraph. The words "vested in possession or enjoyment" do not imply an actual physical possession, but mean merely that the contingency had been removed prior to July 1, 1902. *Ib.*

#### *h. Corporations.*

120. Railroads.—The net profits of a railroad company earned in 1871, and which during that year were used for construction, or were appropriated to the payment of money borrowed for construction and actually used therefor during that year, or in a subsequent year were appropriated to the payment of money so borrowed and used, are liable to taxation under section 15 of the act of July 14, 1870 (16 Stat. 260). 17 Op. 469.

121. Corporations engaged in refining petroleum.—It is impossible for the Attorney-General to say, merely from the facts stated in a letter from the Commissioner of Internal Revenue to the Secretary of the Treasury, whether the Standard Oil Company is taxable under section 27 of the act of June 13, 1898 (30 Stat. 464), on account of its receipts from certain pipe-line companies. 23 Op. 178.

#### *i. Income Tax.*

122. Under the income-tax law of August 27, 1894 (28 Stat. 553), mileage and commutation of quarters paid to officers of the United States Army are to be considered as parts of the incomes of such officers, and are to be added to other income in order to ascertain the total income. 21 Op. 112.

123. Same.—The amount of the tax on the excess over \$4,000 of salary or compensation payable for the calendar year should be deducted by the paymaster or other disbursing officer of the Government from the first installment of salary or pay after the aggregate amount paid such officer in any calendar year has reached the sum of \$4,000. *Ib.*

DIRECT TAXES. See DIRECT TAXES.

### III. Abatement, refund, etc.—Compromise.

#### *a. Abatement, etc.*

124. Abatement of tax on whisky accidentally destroyed by fire in distillery warehouse.—The Secretary of the Treasury has the authority under section 3221, Revised Statutes, to abate the tax on whisky which was accidentally destroyed by fire in a distillery warehouse without any fraud, collusion, or negligence of the distillers, and while the same remained under the custody of an internal-revenue officer, a portion of which whisky had been in warehouse beyond the bonded period of three years. 18 Op. 379.

125. No allowance is made by the act of June 30, 1864 (13 Stat. 223), for leakage of spirituous liquors while stored in bonded warehouses. 17 Op. 500.

126. Redemption of documentary stamps.—The Commissioner of Internal Revenue has authority, with the approval of the Secretary of the Treasury, to make regulations looking to the redemption of unused documentary stamps issued under the war-revenue act of June 13, 1898. 22 Op. 568.

127. Same.—In the absence of such rules, the Commissioner of Internal Revenue may cause such unused stamps to be redeemed. *Ib.*

128. Refunding of legacy taxes.—There is no distinction in the meaning of the terms "vested" in the first paragraph and "vested in possession or enjoyment" in the second paragraph of section 3 of the act of June 27, 1902 (32 Stat. 406), which provides for the refunding of taxes paid upon legacies and bequests for religious uses, etc., under the act of June 13, 1898 (30 Stat. 464). 24 Op. 98.

129. Same—"Vested"—"Vested in possession or enjoyment."—The two expressions should be given their technical legal significance in each paragraph. The words "vested in possession or enjoyment" do not imply an actual physical possession, but mean merely that the contingency had been removed prior to July 1, 1902. *Ib.*

#### *b. Compromise.*

130. Compromise — What the secretary should consider.—In passing upon cases submitted to him for compromise, under sections 3229 and 3469, Revised Statutes, the Secretary of the Treasury, while he is not at liberty

to act from motives merely of compassion or charity, may consider not only the pecuniary interests of the Government, but take into view general considerations of justice and equity and of public policy. 17 Op. 213.

131. The penalty incurred under sections 20 and 21 of the act of February 8, 1875 (18 Stat. 311), for nonpayment of taxes due on the circulating notes issued by banks in Canada for circulation in Canada, but which have passed over the line and been received by banks in the United States and paid out by them within the United States, may be compromised under section 3229, Revised Statutes, by the Commissioner of Internal Revenue, with the advise and consent of the Secretary of the Treasury. 21 Op. 558.

132. Suit for internal-revenue taxes claimed to have been illegally collected.—The Secretary of the Treasury has no power to compromise a suit brought against a collector of internal revenue for the recovery of taxes claimed to have been illegally collected. 23 Op. 507.

133. Power of the Secretary of the Treasury.—The power given the Secretary of the Treasury by section 3229, Revised Statutes, to compromise cases arising under the internal-revenue laws, extends only to suits commenced by the Government to recover taxes; while the ampler power of compromise given him by section 3469, Revised Statutes, is limited to claims in favor of the United States. *Ib.*

#### IV. Enforcement—Penalties.

134. Test case.—A doubt existing as to the right of the Government to enforce section 10 of the act of July 24, 1897 (30 Stat. 206), which excludes from packages of manufactured tobacco, cigars, cigarettes, etc., everything, except the wrapper, label, internal-revenue stamps, and the tobacco or cigarettes, etc., inclosed therein, a test case should be presented to the courts for judicial determination of the questions involved. 22 Op. 181.

135. Search warrants, issuance of—Compensation.—Although no compensation is provided therefor, it is the duty of United States commissioners to issue search warrants in internal-revenue cases when properly applied for. 24 Op. 685.

136. Same.—Section 3462, Revised Statutes, providing for the issue of these warrants, does not state all that must be included in the application therefor. The fourth amendment to the Constitution provides that “no warrant shall issue but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized.” *Ib.*

137. Same.—If a United States commissioner refuses, on proper application, to issue a search warrant, the facts may be brought by petition or otherwise to the attention of the court appointing such recusant officer for such action as it deems proper. *Ib.*

138. Failure to make return of property—Statute imposes a penalty, not a tax.—The 50 per centum required by section 3176, Revised Statutes, to be added to the tax upon taxable property owned by any person who neglects or refuses to make a list or return of such property, and to verify the same as provided by law, is a *penalty*, not a tax. 17 Op. 433.

139. Same.—Section 3120, Revised Statutes, affords no relief to the party, the addition to his tax having been legally made. *Ib.*

140. Same.—Failure through ignorance of the law—Remission by Secretary of the Treasury.—In the case presented, where the delinquent, a private banker, was not guilty of fraud or willful negligences, but in ignorance of the statute failed to make his semi-annual return, and obeyed the law as soon as he knew its requirements: *Held* that the facts bring it within the discretion of the Secretary of the Treasury, given by section 5293, Revised Statutes, to remit fines, penalties, etc. *Ib.*

141. Remission of penalties.—The Secretary of the Treasury has authority, under section 5293, Revised Statutes, to remit the penalty imposed on a national bank for its failure to make a timely return of its liability for the special tax levied under section 2 of the act of June 13, 1898 (30 Stat. 448). 23 Op. 398.

142. Same.—The words “any revenue laws,” found in that section, authorize the remission of a penalty under the internal-revenue laws as well as under the customs-revenue laws. *Ib.*

143. Same.—The additional tax imposed by section 5293, Revised Statutes, is a penalty.



Where an additional duty is clearly intended not to operate as a penalty, Congress is careful to say so. *Ib.*

#### V. Warehouses—Withdrawal from Bond.

**144. Leakage of spirituous liquors while stored in bonded warehouses.**—No allowance is made by the act of June 30, 1864 (13 Stat. 223), for leakage of spirituous liquors while stored in bonded warehouses. 17 Op. 500.

**145. Whisky destroyed by fire in a distillery warehouse.**—The Secretary of the Treasury has the authority under section 3221, Revised Statutes, to abate the tax on whisky which was accidentally destroyed by fire in a distillery warehouse without any fraud, collusion or negligence of the distillers, and while the same remained under the custody of an internal-revenue officer, a portion of which whisky had been in warehouse beyond the bonded period of three years. 18 Op. 379.

**146. Bonded warehouses for the manufacture of medicines and other liquors intended for exportation.**—The word "liquors" in section 10 of the tariff act of October 1, 1890 (26 Stat. 614), which relates to bonded warehouses for the manufacture of medicines and other liquors intended for exportation, does not include whisky. 20 Op. 999.

**147. The Secretary of the Treasury has power to make a regulation under which distilled spirits may be permitted to remain in warehouse after the expiration of three years,** upon the distiller or owner of the spirits filing a declaration of his purpose to export the same in good faith, and giving a bond to do so within a given period. 18 Op. 92.

**148. Liquor in bonded warehouse unaffected by the dispensary law of South Carolina.**—The dispensary law of South Carolina of 1893 is ineffective and inoperative as against distilled liquors held in a United States bonded warehouse under the control of the collector of internal revenue. 21 Op. 73.

**149. Free withdrawal of spirituous liquors from bond.**—Spirits purchased for the National Soldiers' Home at Washington, D. C., are purchased "for the use of the United States" within the meaning of section 3464, Revised Statutes, and may be withdrawn from bonded

warehouses without payment of internal-revenue tax. 25 Op. 449.

**150. Withdrawal of spirits from bond for exportation to Panama and Colon for Canal Zone.**—The effect of the order of the President of December 3, 1904, is to prevent the direct shipment of goods, wares, and merchandise into the Canal Zone of Panama; and distilled spirits withdrawn for shipment to Panama or Colon, although ultimately to go to the Canal Zone, are withdrawn for shipment to a foreign country within the letter and spirit of the statutes. 25 Op. 324.

**151. Failure to withdraw from bond.**—Where the holders of distilled spirits, bonded for exportation, shall have failed within the seven months specified in the bond (given under the regulations of internal revenue circular No. 282) to withdraw such spirits in fact from the distillery warehouse, a forfeiture of the bond follows, and the spirits are not protected from the domestic tax. 18 Op. 246.

**152. Extension of time.**—Upon application of the principal and sureties on such bond, and for good cause shown, the Commissioner of Internal Revenue may, under existing regulations, extend the time named in the bond beyond seven months. *Ib.*

**153. Distraint.**—The spirits covered by an exportation bond, after the failure to withdraw them and after the forfeiture of the bond, are liable to distraint under the act of May 28, 1880 (21 Stat. 145). *Ib.*

**154. The condition of the bond having been broken by the failure to withdraw the spirits, the Government may also proceed upon the bond.** *Ib.*

**155. Exportation, reimportation, and reentry into bonded warehouses.**—Where it was proposed to withdraw a quantity of whisky from bonded warehouse, under section 3330, Revised Statutes, and acts of June 9, 1874 (18 Stat. 64), and March 1, 1879 (20 Stat. 337), in order to ship it to Bermuda, with the purpose, after landing it there, of transporting it back to this country and entering it either for warehousing or for consumption under section 2500, Revised Statutes: *Advised* that such shipment, with the purpose mentioned, would not be an exportation within the meaning of section 3330, Revised Statutes, and the act of 1874; nor would such shipment and the landing abroad fulfil the condition of the exportation bond, and discharge the whisky

from the internal-revenue tax thereon; nor would such whisky, upon return to this country, be entitled to the rights and privileges of imported merchandise under the warehouse laws. 17 Op. 579.

DISPENSARY LAW OF SOUTH CAROLINA. *See* 148.

SALE OF INTOXICATING LIQUORS. *See* INDIAN TERRITORY; OKLAHOMA.

TAX ON LIQUORS. *See* Internal-Revenue II, e. INTERNAL-REVENUE STAMPS, PRINTING OF. *See* PUBLIC PRINTING, IV, 21.

### INTERNATIONAL BANKING CORPORATION.

*See* PANAMA CANAL, 7, 8.

### INTERNATIONAL COPYRIGHT.

*See* COPYRIGHT, 1.

### INTERNATIONAL LAW.

1. Use of water of the Rio Grande lying entirely within the United States.—The rules, principles, and precedents of international law impose no duty or obligation upon the United States of denying to its inhabitants the use of the water of that part of the Rio Grande lying entirely within the United States, although such use results in reducing the volume of water in the river below the point where it ceases to be entirely within the United States. 21 Op. 274.

2. Same.—The doctrine of international servitudes is inapplicable to the situation presented and has never been held to interfere with the enjoyment by a nation within its own territory of whatever was necessary for the development of its own resources or the comfort of its people. *Ib.* (282.)

3. The fundamental principle of international law is the absolute sovereignty of every nation as against all others within its own territory. *Ib.* (281.)

4. The right asserted by Mexico is entirely inconsistent with the sovereignty of the United States over its national domain. *Ib.* (281.)

5. Cuban insurrection.—The rules of international law with respect to belligerent and neutral rights and duties do not apply to the present Cuban insurrection. 21 Op. 267.

6. Same.—Neither our Government nor our citizens have means of knowledge, and therefore are not bound to take notice as to who are and who are not loyal subjects of Spain so long as their actions are confined to her own territory. *Ib.*

7. Same.—Passage of neutrality laws does not increase obligation.—A failure by the United States to pass neutrality laws would not diminish its international obligations; so passing them does not increase such obligations. *Ib.*

8. Same.—The mere sale or shipment of arms and munitions of war by persons in the United States to persons in Cuba is not a violation of international law, however strong a suspicion there may be that they are to be used in an insurrection against the Spanish Government. Individuals in the United States have a right to sell such articles and ship them to whoever may choose to buy. *Ib.*

9. Same.—The goods, and sometimes the ship carrying them, are subject to seizure by the government within whose jurisdiction they may come, if its domestic laws or regulations are violated, but international law imposes no duty upon our Government with respect to such transactions. *Ib.*

10. Same.—The sale and shipment or carriage of such articles to Cuba does not become a violation of international law merely because they are not destined to a port thereof which is recognized by the Spanish Government as open to commerce, nor because they are to be, or are, landed by stealth. *Ib.*

11. Same.—If, however, the persons supplying or carrying arms and munitions from a place in the United States are in anywise parties to a design that force shall be employed against the authorities of Spain, or that, either in the United States or elsewhere before final delivery of such arms and munitions, men with hostile purpose toward the Spanish Government shall also be taken on board and transported in furtherance of such purpose, the enterprise is not commercial but military, and is in violation of international law and of the United States statutes. *Ib.*

12. Same.—International law takes no account of a mere insurrection confined within the

limits of a country which has not been protracted or successful enough to secure for those engaged in it recognition as belligerents by their own government or by foreign governments. 21 Op. 267.

13. *Same.*—The duty of the United States, when a state of war is declared or recognized by another country, is of its own motion to use diligence to discover and prevent within its borders the formation or departure of any military expedition intended to carry on or take part in such war. 21 Op. 267.

14. The imprisonment of a citizen of the United States by an officer of a foreign government without judicial process, or allegation of a violation of law, but because of an alleged disrespect of such official's authority, is such an injury as will render such government liable in damages. 22 Op. 32.

15. Loss of time, absence from business, personal humiliation, and bodily and mental suffering resulting from a wrongful arrest and imprisonment are, under the laws of civilized countries, grounds for compensatory damages, the amount being determined in cases of this character through negotiations. *Ib.*

16. When territory is acquired by treaty or conquest, or otherwise, its relation to the nation acquiring it depends upon the laws of that nation, unless controlled by the instrument of cession. 22 Op. 150.

17. The resolution annexing the Hawaiian Islands is intended to have the effect of a treaty of cession merely, whereby those islands become, in a broad sense, subject to American sovereignty. How that sovereignty will regulate their status with regard to itself and its laws, is not thereby intended to be determined. *Ib.*

18. The suspension of hostilities provided for by the protocol of agreement between the United States and Spain, signed August 12, 1898, is not tantamount to the termination of the war, but creates only an interval in the war and supposes a return to it. 22 Op. 258.

19. Hostilities between nations suspend intercourse and deprive citizens of the hostile nations of rights of an international character previously enjoyed. 22 Op. 268.

20. Property of a neutral, permanently situated within the territory of an enemy, is, from its situation, liable to damage from the lawful operations of war, and no compensation is due for such damage. 22 Op. 315.

21. When public property is ceded by one nation to another its disposition and control are thereafter regulated and governed by the laws of the new owner. 22 Op. 546.

22. If in the grant of a right or privilege the sovereign has retained any authority which may affect its untrammelled exercise and enjoyment, such right is inchoate and can be exercised only by the grace of the succeeding sovereign. *Ib.*

23. On the cession of territory by one nation to another those internal laws and regulations of the former designated as municipal, continue in force and operation until the new sovereign imposes different laws and regulations. 22 Op. 526.

24. The laws which are political in their nature and pertain to the prerogatives of the former government, immediately cease upon the transfer of sovereignty. *Ib.*

25. In territory held by conquest, the military authorities in possession, in the absence of legislation by Congress, may make such rules or regulations and impose such duties upon merchandise imported into the conquered territory as they may deem wise and prudent. 22 Op. 560.

26. The laws of a government which have for their object a certain governmental policy, such as those for the disposition of the public domain and the granting of quasi public franchises, rights, and privileges to private individuals or corporations, cease to have any force or effect after the sovereignty of such government ceases. 22 Op. 574.

27. The issuance of registry to a vessel, entitling it to carry national colors, is an act of sovereignty, although the register itself is not the only document recognized by the law of nations as indicative of the ship's national character. 22 Op. 578.

28. In case of the annexation of a State or cession of territory, the substituted sovereignty assumes the debts and obligations of the absorbed State or territory, taking the burdens with the benefits. 22 Op. 583.

29. *Same.*—The exception to this rule occurs where it is otherwise expressly provided by treaty stipulation, or the instrument of cession, when the absorbed territory becomes an integral part of the acquiring State, and is altogether merged in it, as in the case of the transfer of contiguous territory to a monarchy. *Ib.*

30. **Same.**—Where there is a distinct and independent civilized government, potent and capable within its territorial limits, conducted by a separate executive, not acting as the mere representative by appointment of the distant central administration, such government should respond out of its separate assets to any valid claims upon it. *Ib.*

31. Since the exchange of ratifications of the peace treaty with Spain the occupation of Cuba by the United States has been occupation of a foreign country in time of peace, and is not made a temporary war occupation or otherwise affected, internationally speaking, by the circumstances that the Army has been used as the agency. 22 Op. 654.

*See also* CABLES.

#### INTERSTATE COMMERCE.

1. **The terms of the five Interstate Commerce Commissioners** first appointed under the act of February 4, 1887 (24 Stat. 379), must be computed from January 1, 1887, although their appointments were made March 22, 1887. They are entitled to draw pay only from the time they entered upon the discharge of their duties, respectively. 19 Op. 47.

2. **Term of office of the Commissioners.**—A member of the Interstate Commerce Commission whose term of office, as fixed by law, has expired, can not thereafter lawfully continue to act as such Commissioner and perform the duties of that office. 25 Op. 332.

3. **Navigable waters.**—The power to regulate commerce is one of the instances in which the Constitution operates *proprio vigore*, and its effect as to the navigable waters of the Union was to establish them as highways, open to the free and unrestricted use of all persons engaged in foreign or interstate commerce. 18 Op. 405.

4. Whether Congress has spoken or not spoken, the duty of the United States toward commerce in its several departments of traffic, intercourse, and navigation is equally imperative. *Ib.*

5. **The power of the United States to regulate commerce with foreign nations and among the several States, is general, absolute, and without limit, either as to the time, place, or detail of its exercise, except as to waters whose entire**

navigability for commerce is limited to the confines of a single State. 22 Op. 646.

6. **The power of Congress to regulate commerce, includes the power to regulate the use of all means and instrumentalities used in commerce, whether on sea, navigable rivers, and lakes, in harbors, or on land, irrespective of whether a State has attempted to regulate the same matter or not.** 22 Op. 501, 646.

7. **Commerce is not restricted to the purchase and sale of commodities, but includes also navigation, intercourse, and the reception, transportation, and delivery of passengers and freight by land and water, and also the means and instrumentalities used in such commerce.** *Ib.*

8. **Concessions in freight rates to the United States—Irrigation.**—The act of February 4, 1887 (24 Stat. 379), to regulate commerce, is not violated by a reduction in freight rates, authorized by section 22 of that act, as amended by the act of March 2, 1889 (25 Stat. 862), on materials and machinery used by the United States, or by parties contracting with them, for work upon irrigation systems under construction in the arid regions of the West, provided the Government receives the whole benefit of the reduced rate or concession; but it is violated if the contractor receives any portion of such benefit. 25 Op. 408.

9. **Governmental regulation of railway rates.**—There is a governmental power to fix the maximum future charges of carriers by railroad, vested in the legislatures of the States with regard to transportation exclusively within the States, and vested in Congress with regard to all other transportation. 25 Op. 422.

10. **Same.**—Although legislative power, properly speaking, can not be delegated, the law-making body, having enacted into law the standard of charges which shall control, may intrust to an administrative body, not exercising in the true sense judicial power, the duty to fix rates in conformity with that standard. *Ib.*

11. **Same.**—The rate-making power is not a judicial function and can not be conferred constitutionally upon the courts of the United States, either by way of original or appellate jurisdiction. *Ib.*

12. **Same.**—The courts, however, have the power to investigate any rate or rates fixed by legislative authority and to determine whether they are such as would be confiscatory of the property of the carrier, and if they

are judicially found to be confiscatory in their effect, to restrain their enforcement. *Ib.*

13. *Same.*—Any law which attempts to deprive the courts of this power is unconstitutional. *Ib.*

14. *Same.*—Any regulation of land transportation, however exercised, would seem to be so indirect in its effect upon the ports that it could not constitute a preference between the ports of different States within the meaning of Article 1, section 9, paragraph 6 of the Constitution. *Ib.*

15. *Same.*—Reasonable, just, and impartial rates, determined by legislative authority, are not within the prohibition of Article 1, section 9, paragraph 6 of the Constitution, even though they result in a varying charge per ton per mile to and from the ports of the different States. *Ib.*

16. *Transportation of Government employees free of charge.*—The provisions of the interstate commerce act of February 4, 1887 (24 Stat. 379), do not extend to the postal service of the United States, nor prohibit the transportation by railroad companies, free of charge, of such officers or agents of the Government as are employed in that service. 18 Op. 587.

17. *Wharfage charges on property of the United States.*—The imposition of a toll or charge by the State harbor commissioners of California on merchandise, the property of the United States, passing to or over the wharves at San Francisco, is constitutional and valid; the charge being for a service rendered, the Government is not entitled to such service free of toll. 23 Op. 299.

18. *Same.*—Such toll or charge is not a tax upon or in respect of interstate traffic, nor a tax upon the instrumentalities and agencies of the General Government, within the prohibitions of the Constitution, but is a charge for the use of property and facilities furnished the Government by the State of California. *Ib.*

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#### INTOXICATING LIQUORS.

See INTERNAL REVENUE, II, e; INDIANS, VIII; ARMY, I, e; ALASKA; INDIAN TERRITORY; OKLAHOMA.

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#### INVASION.

The invasion of the State of Vermont in 1864 was really an invasion of the United States. 20 Op. 134.

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#### INVENTIONS INTERNATIONAL EXPOSITION.

See EXPOSITIONS AND FAIRS, II.

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#### INVOLUNTARY SERVITUDE.

See PANAMA, 13, 14.

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#### IRRIGATION.

See TREATIES AND CONVENTIONS, II, h; NAVIGABLE WATERS, 165; PUBLIC LANDS, 41; RESERVATIONS AND PARKS, 15; INTERSTATE COMMERCE, 8.

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#### ISTHMIAN CANAL COMMISSION.

*Sale of materials, supplies, and equipments.*—The president of the Isthmian Canal Commission has authority, upon the completion of investigations by that body, under the direction or with the approval of the President, to sell, in such manner as will produce the best results, various materials, supplies, and equipments purchased and used by the Commission, which can not profitably be brought to the United States. 23 Op. 163.

See also PANAMA, 10.

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#### JAMES RIVER, VIRGINIA.

WING DAM. See NAVIGABLE WATERS, 76.

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#### JEOPARDY.

See NAVY, 111.

**"JOSEPH PIERCE," Steamboat.**

See CLAIMS, 11.

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**JUDGE-ADVOCATE.**

OF THE ARMY. See ARMY, 40, 42.

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**JUDGE-ADVOCATE-GENERAL.**

OF THE NAVY. See NAVY, 95.

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**JUDGMENTS.**

1. The salary of a Federal judge should not be withheld as falling within the act of March 3, 1875 (18 Stat. 481), to meet a judgment recovered against him as surety for a former Government employee. 20 Op. 626.

2. One final judgment on the merits rendered in one action can be pleaded in bar in all the others upon the same cause of action. 21 Op. 447.

3. The Secretary of the Treasury has power under section 3469, Revised Statutes, to compromise a judgment rendered in the name of the United States for damages and penalties incurred under sections 3490-3493, Revised Statutes, notwithstanding the fact that the prosecution was instituted and prosecuted to final judgment by an individual who thereby acquired an interest in the judgment (see *United States v. Morris*, 10 Wheat., 246). 18 Op. 72.

4. Claims in favor of the Government, founded on judgments entered upon forfeited recognizances taken in the prosecution of offenses against the postal laws, may be compromised by the Secretary of the Treasury under the provisions and upon the considerations imposed by section 3496, Revised Statutes. 18 Op. 277.

5. While the Secretary of the Treasury has no authority under section 3469, Revised Statutes, to compromise a claim in favor of the United States which has been reduced to judgment, affirmed by the highest court, and which

is clearly collectible, that section confers upon him the authority to compromise all other claims in favor of the United States, except those arising under the postal laws. 18 Op. 631.

6. It is doubtful if the power given to the Secretary of the Treasury by section 3469 Revised Statutes to compromise "any claim," extends to a judgment recovered by the United States against a corporation in a suit for a penalty for violation of the contract-labor law of February 26, 1885 (23 Stat. 332). 19 Op. 344.

7. Neither section 2 of the act of March 3, 1891 (26 Stat. 1084), nor any other previous law referred to in that section, gives authority to anyone to settle or compromise judgments entered under section 3 of the contract-labor act of February 26, 1885 (23 Stat. 333). 20 Op. 530.

19 Op. 344, adhered to. *Ib.*

8. Section 3469, Revised Statutes, does not confer upon the Secretary of the Treasury power to remit or release any portion of a judgment indebtedness on considerations of hardship to particular individuals. The authority to "compromise" relates to claims of doubtful recovery or enforcement. 21 Op. 50.

13 Op. 479, and 18 Op. 72, distinguished. *Ib.*

9. The Secretary of the Treasury has no authority to remit or release judgments in favor of the Government from which there is no appeal and which are clearly recoverable. 21 Op. 264.

10. The Secretary of the Treasury has no power under section 3469, Revised Statutes, to compromise a final judgment in favor of the United States, which is clearly collectible. That section only authorizes a compromise of a claim which is in some way doubtful. 23-18.

11. Where a judgment against the United States was recovered in the Court of Claims, and a stipulation was made, which is of record in the case, that neither the plaintiff nor the defendant would take an appeal from such judgment: *Advised* that there is no legal objection to payment of the judgment before the expiration of the ninety days allowed by statute for taking an appeal. 19 Op. 281.

See also FOREIGN JUDGMENTS.

**JURISDICTION.**

ADMINISTRATION OF ESTATE. *See* ADMINISTRATION; CUBA 24; UNITED STATES NAVAL ASYLUM AT PHILADELPHIA, PA.

CHANCERY COURT OF VIRGINIA OVER UNITED STATES CRUISER GALVESTON. *See* UNITED STATES, 23-26.

CIVIL AND MILITARY COURTS IN THE PHILIPPINE ISLANDS. *See* PHILIPPINE ISLANDS, 50, 51.

COASTAL AND NAVIGABLE WATERS OF PORTO RICO. *See* PORTO RICO, 38-43, 47.

CRIMES. *See* COURTS II, b; CONSULAR COURTS, 1; INDIANS, XII; ARENAS KEY ISLAND; NO MAN'S LAND.

FEDERAL COURTS. *See* COURTS, II, b.

FISHERIES IN NAVIGABLE WATERS WITHIN STATES. *See* FISHERIES.

LAND ACQUIRED BY THE UNITED STATES FOR PUBLIC BUILDING SITES, RESERVATIONS, AND OTHER PUBLIC PURPOSES. *See* PUBLIC BUILDINGS, UNITED STATES, V.

NORFOLK HARBOR POWDER OFFICER. *See* UNITED STATES, 5.

OFFENSES COMMITTED UPON THE HIGH SEAS. *See* TREATIES, 31.

OVER HOLSTON STREET, KNOXVILLE, TENN. *See* UNITED STATES, 64.

STATE COURT, POWER TO COMPEL FEDERAL EMPLOYEE TO PERFORM JURY DUTY. *See* UNITED STATES, II, 42.

STATE HARBOR COMMISSIONERS AT NORFOLK, VA. *See* UNITED STATES, 22.

IN GENERAL. *See* Appropriate headings for particular subjects desired.

**JURY DUTY.**

*See* UNITED STATES, II, 42.

**KAHAUICI MILITARY RESERVATION.**

*See* RESERVATIONS AND PARKS, II, 32.

**KAISER WILHELM II (Steamer).**

*See* CUSTOMS LAWS, 240.

**KANSAS.**

1. Authority to issue certificates of indebtedness under the treaty with the Kansas Indians is to be considered as conferred upon the date of the proclamation of the treaty, March 16, 1863, and not before. 17 Op. 200.
2. Such certificates were of two classes, viz: First, those issued to persons who had settled and improved lands within the reservation to an amount not exceeding \$29,421 in the aggregate; second, those issued to persons having claims against the Indians to an amount not exceeding in the aggregate \$36,394.47. *Ib.*
3. Certificates issued before the proclamation of the treaty, or before the Senate amendment had received the assent of the Indians, the entire sum of which exceeded the amount allowed by the treaty, are absolutely null and void. *Ib.*
4. Certificates lawfully issued may be distinguished from those unlawfully issued by their respective dates, only those issued after the date of the treaty being recognized, and those only until the amounts limited by the treaty have been reached. *Ib.*
5. Where certificates of the first class already redeemed were issued after the limit prescribed by the treaty had been reached, and a portion of those outstanding were issued before that limit was reached, it is the duty of the Secretary of the Treasury to recognize as lawful such as had been issued within the limit referred to. *Ib.*
6. The Secretary of the Interior is not at liberty to accept in payment of lands any certificates of the first class issued after the limitation upon the amount of such certificates prescribed in the treaty had been reached, nor any certificates of the second class issued in advance of the ratification and proclamation of the treaty. *Ib.*
7. In construing the act of August 15, 1876 (19 Stat. 206), entitled, "An act relieving the State of Kansas from charges on account of ordnance stores furnished to Kansas Territory," the preamble thereto may be resorted to for the purpose of ascertaining the meaning of the enacting clause. 18 Op. 316.
8. Same.—In compliance with the provisions of that act, the State is entitled to a credit of \$11,425 thereunder, and no more. *Ib.*

9. The State of Kansas is not entitled, under the third section of the act of January 29, 1861 (12 Stat. 127), to 5 per centum of the proceeds of the sales of the Indian lands in that State, which proceeds the United States, as a consideration for the extinguishment of the Indian title, agreed to receive, hold in trust, and pay over to the Indians. 19 Op. 117.

10. Same.—The intent of the compact was that the United States should pay to the State 5 per cent of the net moneys which the Government, in its own right, received from the sale of public lands. *Id.*

11. Same.—Legislative contracts or grants are to be construed strictly against the grantees, and nothing passes but what is conveyed in clear and explicit language. *Id.*

12. The provision in the act of March 2, 1889 (25 Stat. 921), for payment to the State of Kansas of \$43,790.32, on account of 5 per centum fund arising from the sale of public lands in said State, precludes all inquiry on the part of the accounting officers of the Treasury as to the legality and justness of the claim. It is their duty to allow and certify the claim for that amount, "as per decision of the First Comptroller of the Treasury of date May 6, 1880, and as stated by the Commissioner of the General Land Office." 19 Op. 362.

13. A statute of Kansas, providing that the United States "shall have the right of exclusive legislation and concurrent jurisdiction," etc., is not a compliance with an act of Congress for the erection of a building at Atchison, which provides for exclusive jurisdiction save as to the "administration of the criminal laws of said State and the service of civil process therein." 20 Op. 242.

*See also* DIRECT TAXES, 2; PUBLIC LANDS, 18.

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#### KANSAS PACIFIC RAILWAY COMPANY.

*See* RAILROADS, 36.

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#### KANSAS AND ARKANSAS VALLEY RAILWAY COMPANY.

*See* INDIANS, 45.

#### KICKAPOO INDIANS.

*See* INDIANS, 57–59.

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#### KLAMATH RIVER.

*See* INDIANS, 43, 44.

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#### KNOXVILLE, TENN.

JURISDICTION OVER HOLSTON STREET. *See* UNITED STATES, 64.

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#### LACHES.

*See* ACTIONS, 3; UNITED STATES, 60.

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#### LAKE CHAMPLAIN.

The waters of Lake Champlain, within the limits of the United States, being partly in New York and partly in Vermont, the right to take fish therefrom depends solely upon the laws of the one or of the other of those States, according as the *locus* is within the boundaries of the one or of the other. The General Government can afford no relief where individual rights are interfered with. 17 Op. 74.

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#### LAKE HURON, MICHIGAN.

Ownership of stone taken from bed of the lake in front of private property.—*Semble* that the proprietors of land adjacent to Lake Huron, Michigan, have no legal right to stone taken from the bed of that lake, in front of their property, by other persons, and delivered by the latter on the Government works—the ownership of such bed being apparently in the State. Under the circumstances presented, the claim of such proprietors for the stone so taken and delivered may properly be resisted by the United States officer in charge of the works. 17 Op. 59.



**LAKE SUPERIOR AND MISSISSIPPI RAILROAD COMPANY.**

AUDIT OF ACCOUNT FOR MAIL TRANSPORTATIONS. *See* POSTAL SERVICE, 100.

**LAND CLAIMS.**

*See* PUBLIC LANDS, XII.

**LAND FOR PUBLIC BUILDINGS.**

*See* PUBLIC BUILDINGS; UNITED STATES, V.

**LAND GRANTS.**

*See* MEXICAN LAND GRANTS; RAILROADS, III; PUBLIC LANDS, VI-IX.

**LAND PATENTS.**

SIGNING OF. *See* PRESIDENT, 98.

**LANGFORD, WILLIAM G.**

CLAIM TO INDIAN LANDS. *See* INDIANS, II, 77-83.

**LAWTON'S CASE.**

*See* PARDON, 12.

**LEAD.**

*See* CUSTOMS LAW, 150, 151, 166-169, 361-364, 370-373.

**LEAKAGE.**

*See* CUSTOMS LAW, 105, 106.

**LEASE.**

INDIAN LANDS. *See* INDIANS, III, e.

SITES UPON HOT SPRINGS RESERVATION. *See* RESERVATIONS AND PARKS, 2-4.

POST-OFFICES. *See* PUBLIC BUILDINGS, 24, 25.

PRIVILEGES AT ELLIS ISLAND. *See* IMMIGRATION, 94-103.

*See also* SEAL FISHERIES, II; and ALASKA, 8-11.

**LEAVES OF ABSENCE.**

1. The meaning of section 4 of the act of March 3, 1883 (22 Stat. 563), is that an absence from the Executive Departments in excess of thirty days shall be without pay except in cases of sickness; that in a case of sickness an absence in excess of thirty days shall be with pay, so long as the Department shall retain upon its roll the sick employee; that after thirty days of absence in a case of sickness no leave of absence for a different cause can be granted with pay; that when thirty days' absence in any one year has been granted with pay, additional absence can be granted to the same party with pay in case of sickness. 18 Op. 352.

2. Section 4 of the act of March 3, 1883 (22 Stat. 564), inhibits heads of Departments and the Executive from granting leave of absence to Department clerks with pay and without charging the time against the period of absence allowed annually by law in every case except that of the sickness of the clerk concerned. 20 Op. 303.

3. Leave of absence with pay after an absence of ninety days prohibited.—Section 5 of the act of March 3, 1893 (27 Stat. 715), prohibits any further leave of absence on pay where an employee has, before July 1, 1893, been absent for a longer period than ninety days during the calendar year 1893. 20 Op. 607.

4. Clerks and employees—Leaves of absence.—Heads of Departments have no authority, in view of section 5 of the act of March 3, 1893 (27 Stat. 675), to grant to clerks and employees sick leave with pay for more than sixty days in any one calendar year. 20 Op. 670.

5. Same.—The act applies to the current year, and absences prior to July 1, 1893, must be taken into account in computing the total leave to which an employee may be entitled

during the calendar year ending December 31, 1893. *Ib.*

6. Leave prorated.—Where an employee is not connected with the Department during the entire calendar year he is not entitled to full annual or sick leave, which should be prorated. 20 Op. 728.

7. Sixty days' leave of absence, with pay, may be granted employees in the Executive Departments, provided that as much as thirty days of it was made necessary by personal illness. 22 Op. 255.

8. Same.—The act of July 7, 1898 (30 Stat. 653), nullifies so much of the act of March 15, 1898 (30 Stat. 316), as provides that the thirty days' sick leave shall only be granted with pay in exceptionally meritorious cases, and reestablishes the law authorizing thirty days' annual leave with pay without any cause being given, and thirty days' additional leave on account of sickness. *Ib.*

9. In computing the annual leave and sick leave under section 5 of the act of March 3, 1893 (27 Stat. 715), Sundays and holidays occurring during such absence should be charged against the absentee. 20 Op. 716.

10. Same.—The word "meritorious" in the above-named section is surplusage. *Ib.*

11. Same.—The word "exceptional" in the same act raises a question of fact upon which the Attorney-General can not advise. *Ib.*

12. Sundays and days declared to be legal holidays by law or Executive order should be included in the annual leave to be granted under the provisions of section 7 of the act of March 15, 1898 (30 Stat. 316). 22 Op. 77.

13. Same.—A clerk or other employee of an Executive Department of the Government whose duties are performed at a place other than the seat of Government is as much entitled to the benefits of the act of March 15, 1898, with reference to leaves of absence, as one whose duties are performed in the city of Washington. *Ib.*

14. Same.—The subordinate officers and employees of the customs service, wherever employed, and whether they receive an annual or per diem compensation, are entitled to the same privileges of the statute with reference to leaves of absence as clerks and employees in the Executive Departments at Washington. *Ib.*

15. Employees of the United States who are members of the National Guard are not en-

titled to leave of absence from their respective duties without loss of pay or time in order to engage in rifle practice, even although in the general orders of the commanding general of the militia such rifle practice may be called a parade. 20 Op. 669.

16. Same.—Rifle practice is not a parade within the meaning of section 49 of the act of March 1, 1889 (25 Stat. 779). *Ib.*

17. Leaves of absence of employees of the Government in the discharge of military duties are not to be charged to the thirty days allowed them annually for rest and recreation. 21 Op. 353.

18. Same.—Section 49 of the act of March 1, 1889 (25 Stat. 779), in regard to leaves of absence of officers and employees of the United States who are members of the District of Columbia National Guard, was not repealed or modified by section 5 of the act of March 3, 1893 (27 Stat. 715). The object of the former was to provide for the public defense and that of the latter to regulate leaves of absence for private reasons or purposes. *Ib.*

19. The act of July 6, 1892 (27 Stat. 87), relating to leave of absence of employees of the Bureau of Engraving and Printing, contemplates a maximum leave of absence to pieceworkers of thirty days, with a continuance of average compensation; and a leave of absence with pay during the same to a pieceworker whose service and consequent earnings are less than the maximum, determined by the average amount of his work and of his pay therefor. 20 Op. 429.

20. Employees of the Bureau of Engraving and Printing are entitled to leave of absence under the act of July 6, 1892 (27 Stat. 87), notwithstanding the provisions of section 5 of the act of March 3, 1893 (27 Stat. 715). 21 Op. 338.

21. Same.—The provisions of the act of 1893 apply only to clerks and employees in the city of Washington. *Ib.*

22. Same.—The provisions of the legislative appropriation act of March 3, 1893 (27 Stat. 715), concerning annual and sick leaves of absence do not apply to employees of the Department of Agriculture employed outside of the city of Washington. (21 Op. 338 followed.) 21 Op. 427.

23. Employees of the powder and ordnance depots, the national armory, and civilian employees of the Ordnance Department.—The act

of February 1, 1901 (31 Stat. 746), which grants fifteen working days' leave of absence each year, without forfeiture of pay during such leave, to every employee of the navy-yards, gun factories, naval stations, and arsenals of the United States, includes all employees of the powder and ordnance depots, the national armory, and civilian employees in the service of the Ordnance Department at works of private establishments having Government contracts. 23 Op. 443.

24. **Test of their inclusion.**—It is the nature of the duties performed by the employee, and not the place where performed, that constitutes the test as to their inclusion. *Ib.*

HOURS OF LABOR, *see* EXECUTIVE DEPARTMENTS, 5-7; PANAMA, 9-11, 15, 16.

*See also* HOLIDAYS; ARMY, 191.

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### LEGACIES.

A legacy or distributive share, in contemplation of law, does not pass to an executor or administrator, but passes through them to such person as is entitled. 22 Op. 298.

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### LEGACY TAX.

*See* INTERNAL REVENUE, II, g.

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### LEGISLATIVE GRANTS.

*See* STATUTORY CONSTRUCTION, 41.

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### LEHIGH VALLEY RAILROAD COMPANY.

*See* NAVIGABLE WATERS, 162.

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### LETTERS ROGATORY.

1. **Porto Rico.**—There is no law, Federal or State, which requires or authorizes any court of New York to comply with an exhorto or letter rogatory issued by the tribunal of the district of San Juan, Porto Rico, to the judge, tribunal, or court of justice in New

York, requesting the latter to order certain persons in that State to appear as defendants in an action instituted in said tribunal. 23 Op. 112.

2. **Execution of German letters rogatory by United States courts.**—The Attorney-General can not properly pass upon the question whether the courts in this country have authority to execute letters rogatory issued out of the German patent office, as that is a matter for judicial and not for executive determination. 24 Op. 69.

3. **Same.**—Congressional legislation recommended which shall explicitly authorize the issuing of letters rogatory by the Patent Office of the United States, and shall clothe Federal courts with power to execute letters issued by those patent offices of the recognized powers which possess and exercise well defined judicial functions. *Ib.*

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### LEVEES.

*See* NAVIGABLE WATERS, 78.

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### LIBEL.

Any publication in an official circular of the ground upon which an employee of the Government has been suspended or discharged from the public service will not support a cause of action for libel against the officers making such publication, provided it was made in good faith, without malice, in the performance of official duty, and with the design only of promoting the public interests. 21 Op. 320.

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### LIBRARY OF CONGRESS.

BUILDING. *See* CONTRACTS, 1, 2.

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### LICENSES.

1. The Secretary of War is not authorized by the joint resolution of March 3, 1891 (26 Stat. 1116), to construct a portage railway at

the Cascades, Oregon, and turn the same over after completion to the State of Oregon for operation on certain conditions. 20 Op. 93.

2. Such an act would give the State of Oregon not merely a revocable license, but a vestage right to operate the railway and derive revenue therefrom, and consequently is beyond the power of the Secretary of War, not having been authorized by the resolution in question. *Ib.*

3. Arrangements made by the Secretary of War and the President, allowing private individuals to enter military reservations and prosecute undertakings for the common benefit of themselves and the United States have had no contractual feature and have always been revocable at the pleasure of the Government. *Ib.*

4. The Secretary of the Treasury has no authority to grant or lease a right of way through the light-house reservation at Cape May, N. J., to the Delaware Bay and Cape May Railroad Company, for the consideration of free passage on such road to all officers and employees of the light-house establishment. 20 Op. 527, 537.

5. Same.—The "lease," as it is termed, operated only as a revocable license, and did not carry any estate in the land in question. *Ib.*

6. Same.—The Secretary of the Treasury has power to revoke the license at pleasure, and to remove the property of the company from the reservation upon its failure to do so after reasonable notice. *Ib.*

7. Licenses are not required for vessels engaged in fur-seal fishing in waters other than those covered by the award of the Paris Tribunal and the act of Congress of April 6, 1894 (28 Stat. 52). 21 Op. 239.

8. When the license of a custom-house broker has been revoked, he can not thereafter deal directly with the customs officials, except when acting for himself as principal. 21 Op. 255.

9. The Secretary of the Treasury may grant a license, revocable at his will, to use a portion of Ellis Island, an immigrant station, for the purpose of erecting and maintaining an exhibiting hall and conducting a land and labor bureau. 21 Op. 473.

10. The Secretary of the Treasury has power under section 9 of the act of March 3, 1893 (27 Stat. 569), to grant exclusive privileges in connection with Ellis Island Immigrant

Station, after public competition, under such limitations and conditions as he may prescribe. 21 Op. 476.

11. Same.—He has no authority to lease any part of Ellis Island. *Ib.*

12. The act of July 28, 1892 (27 Stat. 321), authorizing the Secretary of War to lease such property of the United States under his control as may not for the time be required for the public use, forbids an occupation which contemplates permanency or duration longer than five years. 21 Op. 537.

13. A revocable license, without limitation as to time, by the Secretary of War to a Roman Catholic archbishop, to erect and maintain a chapel on the military reservation at West Point, transcends the statute. *Ib.*

14. Sections 161 and 217 of the Revised Statutes do not authorize the granting of licenses for the occupation of parts of military reservations for the erection of hotels, church edifices, etc. *Ib.*

15. Section 1331 has a special and partial purpose and gives no authority to dispose of the use of property. *Ib.*

16. From section 6, act of July 5, 1884 (23 Stat. 104), it may be regarded as certain that it was the view of Congress that an explicit authority was necessary for even a transient occupation of a military reservation for other than its special purpose. *Ib.*

17. The Secretary of War has no authority to grant permission for the erection of a bethel, reading room, and library within the army reservation on Ship Island. (21 Opin. 537 followed.) 21 Op. 565.

18. The granting of a revocable license to the Washington and Glen Echo Railway Company to lay a single track on the Aqueduct Reservation near Cabin John Bridge does not conflict with the acts of July 29, 1892 (27 Stat. 326), and June 3, 1896 (29 Stat. 246), authorizing the construction of the Washington and Great Falls Railway and providing that there shall be but one railway parallel to and near the Conduit road, that provision being merely a restriction upon the latter company. 22 Op. 240.

19. Long-continued exercise of a power of this kind by the Secretary of War, and the open and notorious use of Government reservations by such licensees without legislative objection from Congress or the adoption of any

legislative rule on the subject, implies the tacit assent of Congress to this custom. *Ib.*

20. *Same.*—The right to issue such a license can not be maintained upon any ground except the benefit to the public interests, and can not be used as a basis for granting, under the guise of a temporary license, a permanent right to maintain a railroad. It confers no contractual right upon the licensee. *Ib.*

21. *Same.*—The license granting the right to construct the road should contain such restrictions or regulations as may be necessary to fix its location and protect Government property. *Ib.*

22. Such portion of the Fort Sill Military Reservation can be set apart as may be required for the erection of the necessary buildings to be used as a mission and school for the Apache prisoners of war. 22 Op. 303.

23. *Same.*—The Secretary of War may make such rules and regulations as shall be deemed suitable and necessary to control the methods and operations of the persons engaged in this work. *Ib.*

24. During the military control of Porto Rico, leave or license may be granted an individual to make temporary use of portions of the public domain. 22 Op. 544.

25. *Same.*—The grant of such a right or privilege to exist in perpetuity, or as long as the conditions of the grant are fulfilled, is beyond the power of the Secretary of War, and ought not to be made. *Ib.*

26. A patent or license granted by the Spanish Government July 11, 1898, to a Spaniard for the manufacture of hemp by steam, etc., in the Philippine Islands for the term of five years is protected by article 13 of the treaty with Spain (30 Stat. 1760), if on that date it would, in ordinary times, have been good under Spanish law, notwithstanding American law gives no identical rights. 22 Op. 617.

27. Secretary of War—Construction of a wharf at San Juan, P. R.—Prior to the passage of the Porto Rican act of April 12, 1900 (31 Stat. 77), the Secretary of War had authority, under section 10 of the river and harbor act of March 3, 1899 (30 Stat. 1151), to issue a license for the building and maintenance of a wharf in the harbor of San Juan, P. R., and the rules imposed by section 3 of the resolution of May 1, 1900 (31 Stat. 715), upon the grant of franchises by the Executive

Council of that island do not extend to an antecedent license granted by him. 23 Op. 552.

28. *Same*—Operative until revoked.—The power to revoke the license so granted is vested in the Secretary of War, and so long as it is unrevoked the rebuilding of the wharf, under such license, is subject to his control and supervision, and not to that of the Executive Council. *Ib.*

STEAM ENGINEERS. *See* DISTRICT OF COLUMBIA, 6.

OFFICERS OF STEAM VESSELS. *See* STEAMBOAT INSPECTION SERVICE.

TAX FOR HUNTING. *See* HUNTING.

PATENTS. *See* PATENTS, 14.

TO CONSTRUCT IRRIGATING DITCH THROUGH MILITARY RESERVATION. *See* RESERVATIONS AND PARKS, 15.

*See also* CONCESSIONS.

## LIENS.

1. Assuming that the title to the land on which the dry dock at Port Royal is built and the exclusive jurisdiction over it are in the United States, the mechanics' lien laws of South Carolina do not operate thereon and claims under such laws may be ignored in the settlement with contractors. 21 Op. 18.

2. *Same.*—On the grounds of public policy, the mechanics' lien laws do not generally, in the absence of expressed provisions, apply to public buildings erected by States for public use. *Ib.*

3. A mechanic's lien will not lie against property of the United States. 21 Op. 18, 78.

4. The owner or consignee of a vessel arriving from a foreign port is entitled under section 2981, Revised Statutes, to a lien for freight on merchandise imported on such vessel, even though the merchandise is intended for exportation. 21 Op. 38.

5. The Treasury Department may legally accept the revenue cutter *Calumet*, subject to a creditor's lien, and after satisfying the lien, proceed against the contractor's bondsmen to recover a payment in excess of the requirements of the contract. 21 Op. 70.

**LIEU LANDS.**

See RAILROADS, III, 64.

**LIFE PRESERVERS.**

See STEAMBOAT-INSPECTION SERVICE, 9.

**LIFE SAVING.**

1. **Life-saving medals.**—Section 12 of act of June 18, 1878 (20 Stat. 163), does not confer authority upon the Secretary of the Treasury to bestow life-saving medals for signal exertions made in saving persons from drowning in small inland streams, ponds, and pools. 21 Op. 65.

2. **Same.**—The waters contemplated by that section are either the high seas or what might be described as waters of the United States. *Ib.*

3. **Perils of the sea.**—The expressions “succoring the shipwrecked” and “saving persons from drowning,” for which, by section 12 of the act to organize the Life-Saving Service, approved June 18, 1878 (20 Stat. 165), the Secretary of the Treasury is authorized to bestow the life-saving medal of the second class, has reference to the rescue of persons who are subjected to the perils of the sea in any of the waters of the United States and in the vicinity of any life-saving station, lifeboat station, or house of refuge, either by shipwreck or from being upon or connected with any vessel in distress. 21 Op. 124.

4. **Same.**—Such medals of honor can not be awarded to any other persons than those who are members of the regular or volunteer life-saving crew. *Ib.*

5. **Medals of honor—Perils of the sea—Shipwreck.**—The act of January 21, 1897 (29 Stat. 494), which was passed for the purpose of giving a more liberal construction to the acts of June 20, 1874 (18 Stat. 127), and of June 18, 1878 (20 Stat. 165), provides that the several acts heretofore passed “shall be construed so as to empower the Secretary of the Treasury to bestow such medals upon persons making signal exertion in rescuing and succoring the shipwrecked, and saving persons from drowning in the waters over which the United

States has jurisdiction, whether the said persons making such exertion were or were not members of a life-saving crew, or whether or not such exertions were made in the vicinity of a life-saving station.” These acts are in *pari materia*, and may be read as one act. 23 Op. 78.

6. **Same.**—The act of 1897 empowers the Secretary of the Treasury to bestow medals of honor upon all persons who, in his opinion, have endangered their lives in saving or attempting to save human life, whenever, wherever, and in whatever way it may be imperiled by the sea. *Ib.*

**LIGHT-HOUSES.**

1. **Light-house keepers.**—Legislation of Congress in regard to the appointment of light-house keepers considered. 18 Op. 344.

2. **Light-House Board—Regulations.**—Section 4669, Revised Statutes, confines the power of the Light-House Board to the adoption and enforcement of such regulations as concern the management and control of light-house keepers, inspectors, and employees for the purpose of properly administering the Light-House Establishment. *Ib.*

3. **Same.**—The statute does not authorize the Board to adopt and enforce regulations controlling in any manner the appointment of light-house keepers or other inferior officers, or to designate the appointees. *Ib.*

4. **Assistant light-house keeper—Nomination of.**—Neither the Light-House Board nor the collector of customs has a legal right to nominate assistant light-house keepers. 18 Op. 528.

5. **Same.**—The Secretary of the Treasury is not restricted to such appointments as the Board recommends, but may appoint any one who, in his judgment, will best discharge the duties of the office. *Ib.*

6. **Same.**—Where a regulation, made under and within the power granted by section 4669, Revised Statutes, is regularly approved, neither the Board without the approval of the Secretary nor the Secretary without the approval of the Board can change it. But such regulation can not abridge or control in any manner the power of appointment conferred by law upon the Secretary. *Ib.*

7. **Diamond Shoal Light-House—Approval of plans.**—The approval by the Secretary of Commerce and Labor of the plans and specifications submitted for the construction of a light-house and fog signal at Diamond Shoal, upon the condition that they are to be changed to meet the objections raised by the Light-House Board, will constitute an acceptance within the provisions of the act of March 3, 1905 (33 Stat. 1266), providing for the construction of such light-house and fog signal. 25 Op. 548.

8. **Same.**—The conditions upon which the approval of the plans and specifications for such light-house and fog signal is given should be recited in the approval itself. *Ib.*

#### LIGHT-MONEY TAX.

See SHIPPING, 68.

#### LIMITATIONS.

OF CLAIMS. See COURTS, 23.

#### LINE OF DUTY.

See PENSIONS, 57, 59.

#### LINE OFFICERS OF THE NAVY.

See NAVY, 89–92.

#### LIQUIDATED DAMAGES.

See CONTRACTS, 126.

#### LIQUIDATION OF DUTIES.

CUSTOMS LAW, V, c.

#### LIQUORS.

See INTERNAL REVENUE, II, c.

#### LONGEVITY PAY.

See ARMY, 153, 154; NAVY, 102.

#### LOS BANOS MILITARY POST.

See RESERVATIONS AND PARKS, 33, 34.

#### LOSS OF MONEY-ORDER FUNDS.

See POSTAL SERVICE, 37.

#### LOTTERY.

1. **Fraudulent lottery—Refusal to deliver registered letters and pay money orders.**—Where the Postmaster-General finds, upon evidence satisfactory to himself, that a person is engaged in conducting a fraudulent lottery, he may and should forbid the delivery of registered letters and the payment of money orders to such person. 17 Op. 77.

2. **Same.**—It is not in terms all fraudulent lotteries, etc., that are excluded from the use of the registry and money-order systems; those only are denied such use which are found to be fraudulent by the Postmaster-General. *Ib.*

3. **A circular of the World's Dispensary Medical Association,** contemplating the sale of 100,000 copies of a certain book at \$1.50 per copy, and proposing to distribute among the purchasers a large amount out of the proceeds of such sale in sums ranging from 25 cents to \$6,000 per each purchaser: *Held* to be unmailable matter, it being manifestly a device to deceive and defraud the public. 17 Op. 624.

4. **Letters and circulars known** (not merely supposed or suspected) to concern lotteries are nonmailable, and may properly be excluded from the mails. 18 Op. 306.

5. **Can not be excluded simply because addressed to such lottery associations.**—Letters addressed to lottery associations or lottery agents can not, simply because they are thus addressed, be deemed to be letters concerning lotteries and as such excluded. *Ib.*

6. **Newspapers or periodicals containing lottery advertisements** are not thereby rendered nonmailable. *Ib.* (*But see* 20 Op. 203.)

7. **A postmaster can not lawfully refuse to receive and forward registered packages addressed to lottery companies or persons described as agents, officers, or managers thereof; nor can he lawfully refuse to issue money orders payable to such companies or to persons**

described in the orders as agents, officers, or managers thereof. 18 Op. 307.

8. Pamphlet containing advertisement of a lottery.—A pamphlet and papers accompanying it considered, and determined to be matter that should be excluded from the mails, as containing an advertisement of a lottery, in violation of section 3894, Revised Statutes. 20 Op. 203.

9. An advertisement in a French publication styled *Le Petite Journal*, considered, and held to fall within the prohibited class defined in section 3894 of the Revised Statutes as amended by the act of September 19, 1890 (26 Stat. 465). 21 Op. 171.

10. An advertisement containing a picture and description of a slot machine with a hand which revolves and indicates by chance the quantity of articles purchased, is not a circular containing any lottery or enterprise offering prizes dependent upon lot or chance within the meaning of the act of September 19, 1890 (26 Stat. 465). 22 Op. 198.

11. Until the Postmaster-General has found, upon evidence satisfactory to himself, that any lottery, gift enterprise, or scheme is a means of fraudulently obtaining money through the mails, he is not authorized to instruct postmasters to return registered letters or to forbid them to pay money orders because the same are addressed or made payable to an individual conducting such lottery, gift enterprise, or scheme. 18 Op. 325.

12. Congress intended in section 3929, Revised Statutes, to draw a distinction between lotteries, etc., fairly, and lotteries, etc., dishonestly conducted. *Ib.*

13. Newspapers—Prizes for guesses.—Where a newspaper contained an advertisement offering in good faith a certain sum of money to the sender of the first "guess" giving the correct or nearest number of votes which each of two opposing candidates, of different political parties, for a designated State office, shall receive at the next ensuing election, the guessing period to end with the day on which the election takes place: Held that the scheme thus advertised is not one offering a prize "dependent upon lot or chance," within the meaning of section 3894, Revised Statutes, as amended by the act of September 19, 1890 (26 Stat. 465), and that the newspaper containing the advertisement is not, by the pro-

visions of said section, excluded from the mail. 19 Op. 679.

14. Guesses as to presidential majority.—It is not offering a prize "dependent upon lot or chance," within the meaning of section 3894, Revised Statutes, as amended by the act of September 19, 1890 (26 Stat. 465), for a corporation to issue and sell shares of stock, agreeing that one-half of the purchase money shall be divided into prizes of different amounts and distributed among the purchasers of the stock whose guesses as to the majority that will be received by either presidential nominee shall be nearest correct. 23 Op. 207.

15. Guesses—Number of paid admissions to Pan-American Exposition at Buffalo.—The offering of prizes by a newspaper to those who make the nearest estimates of the number of paid admissions to the Pan-American Exposition at Buffalo, from the day of opening to the day of closing, is not in violation of section 3894, Revised Statutes, as amended by the act of September 19, 1890 (26 Stat. 465). 23 Op. 492.

16. Same.—The words "dependent upon lot or chance," as used in the above-named section, exclude estimates which are based upon mental calculation, even though the factors which enter into such calculation may be uncertain and matter of conjecture. *Ib.*

Opinions of October 31, 1890 (19 Op. 679), and of September 4, 1900 (23 Op. 207), reaffirmed. *Ib.*

17. Guessing contest.—The scheme of the World's Fair Contest Company, under which a large number of cash prizes are offered to the persons submitting the nearest estimates of the total number of paid admissions to the World's Fair at St. Louis, Mo., from its opening to its close, a charge being made for the privilege of submitting each estimate; and the scheme of the National Contest Company, which proposes to distribute a large number of cash prizes to the persons who can estimate nearest to the popular vote cast for the winning candidate for the presidency of the United States in 1904, a charge being made for each guess, are in effect lotteries under the guise of "guessing contests," and the Postmaster-General is authorized, under sections 3929 and 4041, Revised Statutes, to deny the use of the mails in furtherance of those schemes. 25 Op. 286.



**18. Same.**—To bring such schemes within the inhibition of the statutes it is not necessary that the distribution of the prizes should be dependent wholly upon chance, but it is sufficient if the scheme is not a "legitimate business enterprise" and the distribution is dependent largely upon chance. *Ib.*

Opinions of October 31, 1890 (19 Op. 679); of September 4, 1900 (23 Op. 207), and of August 19, 1901 (23 Op. 492), disregarded. *Ib.*

**19. Whether various schemes are "dependent on lot or chance"** within the meaning of the lottery law, is a mere question of fact upon which the Attorney-General is not authorized to give an opinion. 20 Op. 530.

**20. The Tontine Savings Association of Minneapolis, Minn.,** issued bonds in numerical order agreeing to pay the holder of each bond \$1,500 forty years after date, unless redeemed at an earlier period according to the conditions on the back of the bond. An initiation fee of \$15 was charged, all of which went to the expense fund. Monthly dues were \$3, 12½ per cent of which was set apart to the expense fund, 50 per cent as a maturity fund, and 37½ per cent as a reserve fund. Attached to each bond were three coupons for \$500 each, redeemable out of the maturity fund. The coupons on all the bonds were numbered from 1 up, in numerical order. The coupons were redeemable out of the maturity fund in the order of 1, 3; 2, 6; 9; 4, 12; 5, 15; 18; 7, 21, etc. *Held* that such business was a lottery within the meaning of sections 3894 and 4041, Revised Statutes, as amended by the act of September 19, 1890 (26 Stat. 465). 21 Op. 4.

**21. The business of the Pettis County Bond and Investment Company, of Sedalia, Mo.,** in essential respects, similar to that of the Tontine Savings Association, of Minneapolis, Minn., considered and determined to be in the nature of a lottery within the meaning of the United States statutes. 21 Op. 313.

**22. The name "lottery"** covers any determination of gain or loss by the issue of an event which is merely contrived for the occasion. *Ib.*

**23. Denial of use of mail.**—The acts of September 29, 1890 (26 Stat. 466), and March 2, 1895 (28 Stat. 964), for the suppression of lotteries, are constitutional and empower the Postmaster-General to deny all mail facilities

to those engaged in any of the classes of business described therein. *Ib.* (314.)

**24. The endless-chain enterprise** whereby A agrees with B that upon the return to him by B of a card accompanied by a certain sum of money and the distribution by him of ten similar cards accompanied by like requests to ten other persons, and upon the receipt by A of all of the ten cards accompanied in each instance by like sums of money, he will send to B a magazine for one year free, and will present him with books or other articles equal in value to fifty times the amount of money originally sent by B, comes within the prohibition of section 3894, Revised Statutes, as amended by the act of September 19, 1890 (26 Stat. 465), which provides that "No letter, postal card, or circular concerning any lottery, so-called gift concert, or other similar enterprise offering prizes dependent upon lot or chance, or concerning schemes devised for the purpose of obtaining property under false pretenses, \* \* \*" shall be received, transmitted, or delivered through the mails. 23 Op. 200.

**25. Same—Rule of construction.**—Any enterprise or scheme by which a person pays for a chance to obtain something of much greater value, the getting or failure to get which depends upon lot or chance, is similar to a lottery in the sense in which that word is used in this statute. *Ib.*

**26. Same—Defender Shoe Store et al.**—The scheme adopted by the Defender Shoe Store for carrying on business through the mails is as follows: A ticket is sent to A, who returns it with 80 cents, and receives a book containing four similar tickets to sell to four different persons, collecting from each, first, 20 cents, which repays him the 80 cents he first sent; second, he collects also from each 80 cents, making \$3.20, which he takes with the four tickets to the company's store and for which he gets a pair of shoes. Another book containing four tickets is sent to each of the four persons to whom A sold his tickets, and each is expected, in turn, to sell these four tickets, upon the same terms, and get a pair of shoes therefor, and so on indefinitely. The schemes adopted by the Parisian Skirt Company, the Peerless Shoe Company, and by Henry Murray are similar in all essential respects, but they differ from the former in that it is not the originator of the series, but the persons to

whom he sells the coupons who are to send in the money, and also in containing a provision that in case two coupons are sold, and the cash therefor turned in, the seller is entitled to some other article of less value, or the company will redeem the unsold coupons at a certain value: *Held* that such schemes do not come within the prohibition of section 3894, Revised Statutes, as amended by the act of September 19, 1890 (26 Stat. 465), which forbids the transmission through the mails of matter "concerning any lottery, so-called gift concert, or other similar enterprise offering prizes dependent upon lot or chance." 23 Op. 260.

27. *Same*.—The only element of uncertainty as to getting the article offered in each particular case above named is whether the person will succeed in selling the four tickets, and this depends upon his own ability and exertion as much as ordinarily does the question whether one can sell that which he has for sale. *Ib*.

28. *Same*.—Rule of construction.—If the condition upon which a prize may be received depends solely upon the ability of the beneficiary to perform that condition, then it does not depend upon "lot or chance," in any legal sense. *Ib*.

29. *Same*.—To constitute "lot or chance," in a legal sense, the condition upon which the prize is to be received must depend for its performance entirely upon others over whom and whose action the beneficiary has no control. *Ib*.

Opinion of August 31, 1900 (23 Op. 200), commented on and distinguished. *Ib*.

30. The plan of business of the Provident Bond and Investment Company considered and declared a lottery within section 3894, Revised Statutes, as amended by the act of September 19, 1890, chapter 908. [The details of the business are not set out in the opinion.] 20 Op. 748.

31. Bond investment schemes.—Where a scheme proposes, on account of certain investments by many persons, to return to each something which, as to its certainty, amount, or value, is dependent, not upon the earning or producing power of the investment, nor upon business probabilities or expectations, but upon contingencies over which the parties to the transaction have no control and which they can not forecast, such a

scheme has in it and is dependent upon the elements of chance within the meaning of sections 3929 and 4041, Revised Statutes, as amended by the act of September 19, 1890 (26 Stat. 466). 23 Op. 512.

32. *Same*.—Rule of construction.—Where the operators of a scheme or plan induce others to invest therein upon the promise that upon their doing so and making certain stipulated payments they shall receive a specified return, and it is known by such promisors, or it is so apparent that it ought to be known by them, that if such investors comply on their part and continue to make the stipulated payments all can not receive the promised return; or where such promise of return is absolute, but its performance and the ability of the company to perform is known by it to depend upon a continually increasing accession of new investors or upon the lapses and consequent forfeitures of former ones or both; or where payments to previous investors are promised at a profit far beyond what their investments can or are expected to earn, and are made, mainly, from moneys paid in by later investors upon the same terms, with no other provision for the ultimate payment of subsequent investors; or where such promise is absolute but its performance and the ability of the company to perform are known to depend to a considerable extent upon the broken promises and consequent forfeitures of other investors, such schemes are fraudulent within the meaning of these statutes. *Ib*.

33. *Same*.—Nor is it material in this respect that in any of said supposed schemes the business is so successful that the time when the fraud in the scheme will find its victims is delayed indefinitely, so long as it is certain that the time will come sooner or later. *Ib*.

34. *Same*.—These cases distinguished from guessing contests. *Ib*.

35. *Same*.—The principles which govern the Southern Mutual Investment Company and "Claude Buckley's Perfect System," their workings and results, differing essentially from those of the companies passed upon in the opinion of September 7, 1901 (23 Op. 512), their contracts, taken in connection with the additional terms and requirements imposed upon the companies by the Post-Office Department, do not so depend upon chance as to

bring them within the operation of the antilottery statutes. 23 Op. 531.

36. **Gift enterprise—Scheme of chance.**—The contracts issued by the **Home Cooperative Company of Kansas City, Mo.**, provide for the payment of a membership fee of \$3, and succeeding monthly payments of \$1.35, \$1 of which is to be credited to the party paying the same and applied on the installment purchase of a home, the company agreeing that whenever the sum of \$50 shall have accumulated from these monthly payments, and from such payments on each like contract subsequently issued, the contract having the lowest number not then matured shall be deemed to have matured, and the owner thereof shall be entitled to an installment of \$50 per month to be applied on the payment of a home for such owner, until \$1,000 has been paid, when the contract shall be deemed to be fully performed. After the maturity of a contract, the monthly payments are increased to \$5.35, \$5 of which is to be placed to the credit of the party purchasing the home; and when the amounts so paid aggregate \$1,000, less the amount such owner has to his credit at the maturity thereof, then the lien of the company on the property is discharged and the title thereto vests in the owner of the contract. Each contract is to be numbered in the order of its acceptance and given the number next higher than the contract last made, the benefits of each contract beginning in numerical order after the fulfillment of the contracts of lower number: *Held*, that the plan is a "gift enterprise or scheme for the distribution of money by chance," within the meaning of section 3894, Revised Statutes, as amended September 19, 1890 (26 Stat. 465), and, as such, the **Postmaster-General** is authorized, under sections 3929 and 4041, Revised Statutes, to exclude from the mails all mail matter connected with such business. 24 Op. 563.

37. **Same.**—As the number given a contract when issued, and not the date of receipt, determines its value, a contract bearing a low number will be much more valuable than one bearing a high number; and it being largely a matter of chance which contract will receive the lowest number, and consequently be of greater value, the elements of a lottery are clearly discernible in the scheme. *Ib.*

38. **Cigarette coupons—Plug tobacco tags.**—The scheme of the **American Tobacco Company** to inclose in each package of their cigarettes a coupon or certificate upon which the company agrees to pay a premium for the return of each complete set of coupons, numbered from 1 to 10, there being but one complete set in each thousand coupons issued, is a violation of section 2 of the act of July 1, 1902 (32 Stat. 714), such coupon being a "certificate, or instrument purporting to be or represent a ticket, chance, share, or interest in, or dependent upon, the event of a lottery." 25 Op. 266.

39. **Same.**—The phrase "event of a lottery," above quoted, was not intended by Congress to refer to a drawing alone, but to any scheme or plan whereby the value of the certificate is made to depend upon lot or chance. *Ib.*

40. **Same.**—The question as to whether or not a scheme to conceal in one of a large number of plugs of tobacco a tin tag entitling the finder to a prize is a violation of section 2 of the act of July 1, 1902 (32 Stat. 714), admits of considerable doubt and should be judicially determined. *Ib.*

FRAUD ORDERS. *See also* POSTAL SERVICE, 12-15.

# LOUISIANA.

A State statute that the United States shall have over land to be taken for a public building "the right of exclusive legislation and concurrent jurisdiction together with the State of Louisiana" is not a compliance with the act of April 26, 1890 (26 Stat. 67), requiring a cession to the United States of jurisdiction over the site selected for all purposes except the administration of the criminal laws of said State. 20 Op. 298.

SWAMP LAND INDEMNITY. *See* PUBLIC LANDS, 22.

LEVEES. *See* NAVIGABLE WATERS, 78.

# LOYAL CREEK CLAIMS.

*See* INDIANS, 135, 136, 147.

**LYDECKER TUNNEL.**

*See* DISTRICT OF COLUMBIA, VI.

**MACHEN BROTHERS.**

COAL CONTRACT. *See* POST-OFFICE DEPARTMENT, 4-6.

**M'KEE, REDICK.**

*See* CLAIMS, I, h.

**M'KINLEY ACT.**

(Act of October 1, 1890, 26 Stat. 567.)

**MAILS.**

1. Any willful obstruction or retarding of passage of a train carrying the mail in the usual and ordinary way is a violation of section 3995, Revised Statutes. It is no excuse that such person is willing to have the mail car detached and run separately. 21 Op. 9.

2. Same.—When two or more persons combine for the purpose of interfering with the passage of a train carrying the mail, and one or more of the parties does any act to effect such object, all of the parties are liable to a criminal prosecution for conspiracy under section 5440, Revised Statutes. *Ib.*

3. Printed matter, other than books, received by mail from foreign countries, under the provisions of postal treaties or conventions, is declared free of duty by section 17 of the act of March 3, 1879 (20 Stat. 360); and no distinction is there made between such as is mailed to subscribers for their own use and such as is mailed to dealers for sale. 17 Op. 187.

4. Same.—There is no warrant of law for inquiry by the Treasury Department as to whether such printed matter is received as merchandise, nor for the imposition of duty thereon. *Ib.*

5. Same.—Books which are admitted to the international mails, exchanged under the

provisions of the Universal Postal Union Convention, may be delivered to addresses upon the payment of the duty thereon. *Ib.*

*See* POSTAL SERVICE; PHILIPPINE ISLANDS, 40-43; LOTTERY; OCEAN MAIL SERVICE.

**MAKAH INDIANS.**

*See* SEAL FISHERIES, 8.

**MANIFEST.**

*See* SHIPPING, I, f; INTERNAL REVENUE, II, f.

**MAPS.**

*See* PUBLIC PRINTING, 18.

**MARINE CORPS.**

*See* NAVY, III.

**MARINE-HOSPITAL SERVICE.**

1. Assistant surgeons—Promotion.—The provision in section 2 of the act of January 4, 1889 (25 Stat. 639), that "no officer shall be promoted to the rank of passed assistant surgeon until after four years' service," applies to all assistant surgeons in the Marine-Hospital Service without any exception. 19 Op. 296.

2. The Surgeon-General of the Marine-Hospital Service and the Secretary of the Treasury may, with the approval of the President, make needful and proper quarantine regulations not inconsistent with State laws and regulations. 20 Op. 466.

3. The only limitation on the powers conferred upon the Surgeon-General of the Marine-Hospital Service and the Secretary of the Treasury, subject to the approval of the President, to make quarantine regulations with reference to immigration from infected ports is that Federal regulations must not in-

terfere with State laws. It is competent for those officials to prescribe a longer quarantine period, both for persons and cargo, than the State law requires, the regulations carefully providing that the Federal jurisdiction should attach upon the expiration of State action. 20 Op. 469.

4. Sick and disabled officers and seamen of the Revenue-Cutter Service are entitled to the benefit of the Marine-Hospital funds provided for sick and disabled seamen. 21 Op. 340.

5. Same.—The Treasury Department is obliged, under existing laws, to extend the benefits of the Marine-Hospital fund to the sick and disabled officers and seamen of the Revenue-Cutter Service. 21 Op. 365.

6. The tonnage tax collected in Porto Rico under section 14 of the act of June 26, 1884 (23 Stat. 57), as amended by section 11 of the act of June 19, 1886 (24 Stat. 81), should be so deposited as to be available for the maintenance in part of the Marine-Hospital Service. 24 Op. 122.

7. The question as to whether or not a citizen of Porto Rico, legally a resident of New York, is eligible for appointment in the Marine-Hospital Service under a departmental regulation which requires the applicant to be a citizen of the United States, or, if of foreign birth, to furnish proof of American citizenship, does not involve any question of law within the meaning of section 356, Revised Statutes, and is not, therefore, one properly calling for an opinion of the Attorney-General. The requirement not being demanded by law, its interpretation may properly be left to the department or bureau responsible for its existence and execution. 25 Op. 183.

18 Op. 521; 20 Op. 649; 21 Op. 255, followed. *Ib.*

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#### MARINE PROTESTS.

AUTHENTICATION, ETC. *See* DIPLOMATIC AND CONSULAR SERVICE, 9.

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#### MARSHAL.

The marshal in whose hands a writ of execution against a foreign minister is placed for execution is not an "officer concerned in

executing it" under the statute, where he merely serves notice upon the minister, but does not in fact execute the writ. 17 Op. 563.

*See also* UNITED STATES MARSHALS; CONSULAR COURTS.

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#### MASSACHUSETTS.

CLAIM OF. *See* CLAIMS, I, e.

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#### MASTER.

OF STEAM VESSELS. *See* STEAMBOAT-INSPECTION SERVICE.

OF FOREIGN VESSELS. *See* SHIPPING, 40.

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#### MAXIM-NORDENFELT COMPANY.

*See* NAVY, I, f.

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#### MEAT.

INSPECTION. *See* DEPARTMENT OF AGRICULTURE, VIII.

IMPORTATION. *See* FOOD PRODUCTS.

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#### MECHANICS' LIENS.

*See* LIENS.

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#### MEDALS.

1. Medals of award at the World's Fair.—The law authorizing the Secretary of the Treasury to furnish electrotypes and photographs of the medals of award to exhibitors at the World's Fair to whom medals have been awarded, and to newspapers and periodicals for publication, carries with it the authority to those to whom such electrotypes and photographs may be furnished to have prints made therefrom without further or more specific authority. 21 Op. 330.

2. The exhibitors, printers, or publishers have not the right to insert the name of the ex-

hibitor in the blank space which will be used for that purpose on the medal. *Ib.*

3. After the exhibitors shall have received the medals and diplomas awarded them, the Treasury Department has no further authority over them, and is not authorized to say what use shall or shall not be made of them, or to restrict the making or using of facsimiles of them by exhibitors to whom they have been awarded, beyond what is prescribed by the express provisions of the statutes referred to in this opinion. *Ib.*

4. So much of section 3 of the act of August 5, 1892 (27 Stat. 389), as provides for the duplication in gold, silver, or brass, of medals awarded at the World's Fair, at the mints of the United States, was repealed by the act of March 3, 1893 (27 Op. 587). 21 Op. 253.

5. *Same.*—The object of a later act being expressly to amend an earlier act, a feature of the former act which was omitted from the later act was necessarily repealed. *Ib.*

6. A claim for a medal of honor under the act of March 3, 1861 (12 Stat. 751), should not be entertained where there is an unexplained delay of twenty-eight years in presenting the claim and it is unaccompanied by any official evidence of the statements made. 20 Op. 421.

7. Medal of honor.—Under section 6 of the act of March 3, 1863 (12 Stat. 751), the President may present a medal of honor to an officer or private in the military service of the United States who has distinguished himself in action, notwithstanding he is not in the military service at the time the case reaches the President for consideration, provided the application or recommendation therefor was made while he was in the military service. 24 Op. 580.

8. *Same.*—A medal of honor can not be awarded where the application or recommendation therefor is made after the officer or private has been discharged from the military service. *Ib.*

9. Surrender of old medals of honor in exchange for new.—It is not within the authority of the Secretary of War, in replacing the medals issued to officers and privates for gallantry in action, under the joint resolution of July 12, 1863 (12 Stat. 623), and section 6 of the act of March 3, 1863 (12 Stat. 751), as provided in the act of April 23, 1904 (33 Stat.

274), to allow a particular grantee, who is entitled to a new medal, to receive it and at the same time retain the old medal in his possession. 25 Op. 529.

10. *Same.*—The word "replace," as used in the act of 1904, implies the loss, destruction, or surrender of the old medal. *Ib.*

11. *Same.*—It is optional with the holder of a medal whether he shall surrender his old medal for the new. *Ib.*

*See also* CERTIFICATE OF MERIT; AND LIFE SAVING.

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#### MEDICAL AND PAY DIRECTORS, NAVY.

*See* NAVY, 78–80, 98.

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#### MEDICAL CORPS OF THE NAVY.

GRADE OF PASSED ASSISTANT SURGEON. *See* NAVY, 86, 87.

PROMOTION. *See* NAVY, 29.

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#### MEDICINAL DRUGS.

*See* INTERNAL REVENUE, 99–103.

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#### MEMBERS OF CONGRESS.

*See* CONGRESS, IV; SURETY.

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#### MERCHANT MARINE.

*See* SHIPPING, I, g.

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#### MEXICAN CLAIMS COMMISSION.

*See* CLAIMS, II.

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#### MEXICAN LAND GRANTS.

1. Patents to Mexican land grants in California under the act of March 3, 1851 (9 Stat. 631), were conclusive only as between

the United States and the patentees. They did not affect the interests of third persons. 21 Op. 13.

2. The surveys confirmed by such patents do not preclude a legal investigation and decision by the proper tribunals between conflicting claimants. *Ib.*

3. Third persons claiming title to the land thus patented may bring a suit to declare a trust in said land. Such a suit may be brought without the aid of the Attorney-General, and in the State courts. The decision of a State court upon such a suit, unappealed from, binds the parties thereto, whether righteous or erroneous. *Ib.*

4. When such third persons fail to sue until the period of the statute of limitations of the State has expired, they are barred by their *laches* from suing thereafter. It is immaterial that they had meanwhile been applying to Congress for relief. *Ib.*

#### MEXICO.

1. Article VII of the treaty of February 2, 1848, between Mexico and the United States, known as the treaty of Guadalupe Hidalgo, is still in force, so far as it affects the Rio Grande. 21 Op. 274.

2. The taking of water for irrigation from the Rio Grande above the point where it becomes the boundary between the United States and Mexico is not prohibited by said treaty. *Ib.*

3. Article VII is limited in terms to that part of the Rio Grande lying below the southern boundary of New Mexico, and applies to such works alone as either party might construct on its own side. *Ib.*

4. The only right the treaty professed to create or protect with respect to the Rio Grande was that of navigation. *Ib.*

5. Claims against the United States by Mexico for indemnity for injuries to agriculture alone, caused by scarcity of water resulting from irrigation ditches wholly within the United States at places far above the head of navigation, find no support in the treaty. *Ib.*

6. The rules, principles, and precedents of international law impose no duty or obligation upon the United States of denying to its inhabitants the use of the water of that part of the

Rio Grande lying entirely within the United States, although such use results in reducing the volume of water in the river below the point where it ceases to be entirely within the United States. *Ib.*

7. The right asserted by Mexico is entirely inconsistent with the sovereignty of the United States over its national domain. *Ib.* (282.)

8. Extradition from Mexico—Rearrest and trial on another charge.—Acosta, having been returned from Mexico to the State of Florida under extradition proceedings, to be punished for a crime committed within that State, was convicted and sentenced to imprisonment. Upon his release he was arrested for another crime without having an opportunity of returning to Mexico. Demand having been made upon the State Department by the Mexican Government for his release, and it not appearing that the prisoner has made an attempt to invoke his right to return to Mexico: Held that any action by the Department of State at this time to secure his release would be premature. 23 Op. 604.

9. Same.—The primary resort of the defendant is to the courts. He may either apply to the Federal courts for a writ of habeas corpus, or interpose the alleged irregularity of his arrest as a matter of defense on the trial of his case in the State court. *Ib.*

10. Same—Authority of the Federal Government.—The question whether, in case any rights the prisoner may possess are denied in the State courts, the Federal Government is powerless or free from obligation to interfere in that which may then be a matter of international obligation, is not decided. *Ib.*

Opinion of March 27, 1901 (23 Op. 432), reaffirmed. *Ib.*

#### MIAMI'S FUND.

See INDIANS, III, d.

#### MIDSHIPMEN.

See NAVAL ACADEMY.

#### MILE.

See WORDS AND PHRASES.

## MILEAGE.

See REVENUE MARINE, 19.

## MILITARY ACADEMY.

1. **President—Power to revoke order of Secretary of War and restore cadet against recommendation of the Academic Board.**—It is not within the authority of the President, in opposition to an adverse recommendation of the Academic Board of the Military Academy, to revoke an order of the Secretary of War for the discharge of a cadet and to restore him to the Academy, to take his place in the next succeeding first class. 17 Op. 67.

2. **Same.**—That order, having been completely executed, is beyond the power of revocation. *Ib.*

3. **Same.**—Congress may thus limit or restrict the authority of the President to appoint cadets. *Ib.*

4. **Same.**—Section 1325, Revised Statutes, prohibits the returning or reappointing of a cadet to the Military Academy, except upon the recommendation of the Academic Board. *Ib.*

5. **Professors are army officers—Entitled to pension.**—The professors of the Military Academy at West Point are commissioned officers of the Army, whose pay and allowances are assimilated to those of a lieutenant-colonel and a colonel; and in case of such disability as is described in section 4693, Revised Statutes, they are entitled to pensions at the same rate with officers of the rank of lieutenant-colonel. 17 Op. 359.

6. **The term of the new professor at the Military Academy created by the act of March 11, 1893 (27 Stat. 515), did not commence until July 1, 1893,** until which time he still retained his position as a first lieutenant in the Army. 20 Op. 593.

7. **Assignment of graduates to the cavalry or infantry.**—The Secretary of War is authorized to assign to the cavalry or infantry recent graduates of the United States Military Academy, noncommissioned officers, and civilians, although "additional" second lieutenants remain in the engineers and artillery, and no vacancies exist in the last-named branches. 20 Op. 149.

8. **Same.**—The words "such arm or corps" in the act of May 17, 1886 (24 Stat. 50), refer to the arm the duties of which the graduate has been adjudged competent to perform. *Ib.*

9. **Same.**—The word "vacancy" used in the act contemplates a vacancy in the arm of the service in which the additional second lieutenant is then commissioned. *Ib.*

10. **The Secretary of War has no power to accept for the Government a donation of a Roman Catholic chapel to be erected on the military reservation at West Point,** where the acceptance is accompanied by a limitation for its use in perpetuity by Roman Catholics. 21 Op. 537.

11. **Memorial hall at West Point.**—Statement made of the method to be followed under the act of July 23, 1892 (27 Stat. 262), in adopting plans and specifications, and in selecting granite and marble for building a memorial hall at West Point. 21 Op. 240.

12. **A soldier who passes a successful examination and becomes the holder of a certificate under the provisions of the act of July 30, 1892 (27 Stat. 336), is entitled, under that act, to promotion as second lieutenant after the graduates of the Military Academy shall have been provided for and assigned.** 22 Op. 57.

13. **Appointments of engineer and assistant engineer—Civil service.**—The Superintendent of the United States Military Academy, in making the appointments of engineer and assistant engineer authorized by the act of April 28, 1904 (33 Stat. 445), is limited in his selection to those who have qualified under the civil-service law and rules. 25 Op. 341.

14. **Same.**—The words "to be selected and appointed by the Superintendent of the United States Military Academy," used in the appropriation act of March 3, 1905 (33 Stat. 854), providing for the appointment of an engineer and an assistant engineer of steam, electric, and refrigerating apparatus for the cadets' mess at the Academy, authorize that officer to make such appointments without reference to the civil-service law. 25 Op. 413.

LONGEVITY PAY, CREDIT FOR CADET SERVICE. See ARMY, II, d, 154.

## MILITARY POSTS.

See ARMY, I, e.



**MILITARY RESERVATIONS.**

*See* RESERVATIONS AND PARKS, II.

**MILITARY ROADS.**

1. **Withdrawal from sale.**—The appropriation by Congress of land for a military road and the building of such road thereon just as effectually withdraws and excludes such land from sale as if it had been done in express terms. 23 Op. 283.

2. **Same—Effect of land patents.**—The fact that patents have since been issued for lands through which such road passes, without any reservation of the lands included within the road, does not operate as a vacation of the portion of the road within the patented lands, nor give to such owner a right to obstruct, interfere with, or change the location of the road. *Ib.*

3. **Same—Authority to abandon, vacate, or alienate such road.**—Congress having set apart a portion of the public domain for a military road, and having constructed thereon such road, it is not within the power of any other Department of the Government to abandon, vacate, or alienate the road, or the land on which it is constructed, and a patent issued for such lands would, to that extent, be inoperative and void. *Ib.*

4. **Same—Not subject to State or private control.**—Such a road, though within a State, is not subject to either State, municipal, or private control, or interference in any way. *Ib.*

**MILITARY SUPPLIES.**

*See* NEUTRALITY.

**MILITIA.**

*See* ARMY, III.

**MINERAL LANDS.**

*See* PUBLIC LANDS, X; INDIANS, III, e.

**MINNEAPOLIS, MINN.**

PUBLIC BUILDING AT. *See* PUBLIC BUILDINGS, 2, 13.

**MINNESOTA.**

STATE PROCESS. *See* COURTS, 32.

SWAMP-LAND GRANTS. *See* PUBLIC LANDS, 25-30.

**MINING LAWS.**

SPANISH. *See* CUBA, 28-30.

**MINORS.**

*See* NAVY, I, a.

**MIRAFLORES ISLAND.**

**Title to.**—The United States possesses a valid and complete title to the whole of Miraflores Island. That island did not belong to Porto Rico before the cession, and by the treaty of peace title to it was transferred by Spain to the United States. 25 Op. 193.

**MISSISSIPPI.**

*See* DIRECT TAXES, 3.

**MISSISSIPPI CHOCTAW INDIANS.**

*See* INDIANS, 11.

**MISSISSIPPI RIVER.**

*See* NAVIGABLE WATERS, II, b.

**MISSISSIPPI RIVER COMMISSION.**

1. The salaries and traveling expenses of the members of the Mississippi River Commission

appointed from civil life (Congress having failed to make a specific appropriation therefor) can not lawfully be defrayed out of the fund provided for the Mississippi River improvement. The application of such fund to that object would be inconsistent with section 3678, Revised Statutes. 18 Op. 463.

2. **Eight-hour law.**—The Attorney-General declines to express an opinion as to whether certain employees of the Mississippi Commission are “laborers” or “mechanics” within the meaning of the act of August 1, 1892 (27 Stat. 340), for the reason that those words are used in the statute in their ordinary sense, and the determination of that question is, therefore, a matter of administration only, involving the ascertainment of a question of fact, upon which the Attorney-General is not authorized to express an opinion. 20 Op. 487.

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**MISSOURI, KANSAS AND TEXAS RAILWAY.**

COMPENSATION FOR INDIAN LANDS TAKEN.  
*See* INDIANS, II, 94.

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**MISTAKE.**

IN BIDDING, *see* CONTRACTS, I, b.  
OF FACT, *see* CUSTOMS LAW, 311, 312, 316, 317.  
OF LAW, *see* ARMY, 16; CUSTOMS LAW, 315, 318, 319; INTERNAL-REVENUE, 4.

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**MONEY.**

*See* BANKS AND BANKING, 39; TREASURY DEPARTMENT, V; CUSTOMS LAW, 180; INTERNAL REVENUE. 104.

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**MONEY BENEFITS.**

*See* NAVAL PENSION FUND.

**MONEY ORDERS.**

POSTAL SERVICE, VII; INTERNAL REVENUE, 81, 82.

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**MONONGAHELA RIVER.**

IMPROVEMENT OF. *See* NAVIGABLE WATERS, 75.

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**MORTGAGE.**

*See* INTERNAL REVENUE, II, f, (9).

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**MOST-FAVORED-NATION CLAUSE.**

*See* TREATIES AND CONVENTIONS, 46, 47.

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**MOUNT VERNON RELICS.**

1. **Are the property of George Washington Custis Lee.**—The Mount Vernon relics (so called) which were removed from Arlington by the military authorities of the United States in 1862 for safe keeping, and are now deposited in the Smithsonian Institution, are the private property of George Washington Custis Lee, they having passed to him under the will of his grandfather, George Washington Parke Custis, upon the death of his mother, Mary Ann Randolph Lee. 23 Op. 437.

2. **Restoration.**—The Government having taken possession of these articles solely for their safe-keeping, and never having acquired title to them, the President has the power to return them to their rightful owner. Their restoration now is quite as much within the scope of Executive authority as has been their preservation. *Ib.*

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**MUNICIPAL ORDINANCES.**

A city ordinance is within the expression “laws of the land,” as used in the fifty-ninth article of war, and a soldier violating such an ordinance and escaping to a military reservation should be delivered on demand to the civil authorities for trial. 21 Op. 88.

**MUSTER.**

*See* ARMY II, 78; III—Militia.

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**NATIONAL BANKS.**

*See* BANKS, II.

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**NATIONAL BUREAU OF STANDARDS.**

*See* TREASURY DEPARTMENT, III.

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**NATIONAL FOREST RESERVES.**

*See* RESERVATIONS AND PARKS, IV.

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**NATIONAL GUARD.**

*See* DISTRICT OF COLUMBIA, VIII.

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**NATIONALS.**

*See* WORDS AND PHRASES.

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**NATURALIZATION.**

*See* CITIZENSHIP.

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**NAVAL ACADEMY.**

1. Professors of mathematics.—The heads of the departments of ethics and English studies, of Spanish and other modern languages, and of drawing at the Naval Academy should be commissioned as "professors of mathematics," under section 1528, Revised Statutes, after passing the examinations required by the act of January 20, 1881 (21 Stat. 317). 17 Op. 103.

2. Graduates—Relative rank.—Opinions of August 7, 1877 (15 Op. 637), and March 31, 1879 (16 Op. 296), referred to, and suggested that copies thereof be sent by the Secretary of the Navy to the Senate in response to a

resolution of that body in regard to the subject of relative rank of graduates of the Naval Academy. 17 Op. 193.

3. Hazing.—To constitute the offense of "hazing" at the Naval Academy, under the act of June 23, 1874 (18 Stat. 203), it is essential that the victim should be a new cadet of the fourth class. Hence, unless the charge against the accused alleges that the victim was a new cadet of the fourth class, a court-martial organized under the statute would have no jurisdiction over it. An allegation that the victim was a candidate for appointment or admission to the Academy is insufficient. 18 Op. 292.

4. Same.—Where the record of the proceedings of a court-martial in the case of a naval cadet of the second class, who was tried under the act of June 23, 1874 (18 Stat. 203), for the offense of hazing showed that the acts complained of were pulling the nose, striking at, striking, and otherwise maltreating a naval cadet of the fourth class: *Held* that these facts, in conjunction with other circumstances, present a case containing all that is essential to constitute the offense of hazing within the meaning of the statute, and that the court had jurisdiction of the complaint. 18 Op. 376.

5. Same.—Where a cadet entered the Naval Academy and became a member of the fourth class in 1885, and also remained a member of the same class in 1886, he is at the latter period as much an "older cadet" within the definition of the offense of "hazing" as a cadet who, having entered the Academy at the same time (1885), has since been advanced to a higher class, and (equally with the latter) is capable of committing that offense. 18 Op. 507.

6. Hazing—Summary dismissal of cadet.—The statutes on the subject of hazing do not confer upon the Superintendent of the Naval Academy, or the Secretary of the Navy, or upon both conjointly, the power summarily to dismiss from the Academy without trial by court-martial, a midshipman guilty of that offense. 25 Op. 543.

7. Same.—The Attorney-General declines to express an opinion upon the question whether proceedings by court-martial would bar proceedings in the civil courts for an assault or other crime involved in the offense of hazing, for the reason that it would be of no assistance to those officers in the proper discharge

of their duties, and should such action be taken the matter would peculiarly be one for the consideration of his Department. *Ib.*

**8. Hazing, Naval Academy—Summary dismissal.**—The statutes on the subject of hazing do not confer upon the Superintendent of the Naval Academy, or the Secretary of the Navy, or upon both conjointly, the power summarily to dismiss from the Academy, without trial by court-martial, a midshipman guilty of that offense. 25 Op. 543.

**9. Reinstatement of midshipman dismissed for misconduct.**—The Secretary of the Navy has no authority to reinstate to the Naval Academy a midshipman whose appointment has been revoked because of accumulated demerits and the revocation thereof duly promulgated. 25 Op. 579.

**10. Same.**—A midshipman is an officer. *Ib.*

**11. Same.**—An officer who has resigned or been dismissed can not be restored to the office formerly held by him except by reappointment. *Ib.*

**12. Same.**—Opinion of Attorney-General Miller of July 8, 1889 (19 Op. 351), holding that the resignation of a naval cadet could not be recalled except by reappointment, confirmed and extended to the case of a dismissal for misconduct. *Ib.*

**13. Reinstatement to Naval Academy of midshipman dismissed for misconduct.**—The Secretary of the Navy has no authority to reinstate to the Naval Academy a midshipman whose appointment has been revoked because of accumulated demerits and the revocation thereof duly promulgated. 25 Op. 579.

**14. Resignation of a midshipman—Reappointment.**—A midshipman at the Naval Academy who, being found deficient in studies, presented his resignation, which was accepted, can not be reappointed to fill the vacancy thus created if he is more than 20 years of age. 25 Op. 585.

**15. The resignation of a naval cadet, and its acceptance by the Secretary of the Navy, completely severs the relations of the cadet with the Naval Academy, who can not be reinstated except by an appointment in conformity to sections 1514 and 1515, Revised Statutes.** 19 Op. 350.

**16. Same.**—The action of the Secretary of the Navy in permitting the withdrawal of such a resignation after its acceptance, has no legal effect whatever. *Ib.*

**17. The Secretary of the Navy had no authority, without the recommendation of the Academic Board, to grant leaves of absence to certain cadets in the Naval Academy, with permission to report to the Superintendent of the Academy to join the next fourth-year class, where they had been found deficient at the semiannual examination held in January, 1889 (secs. 1519, 1523, Revised Statutes).** 19 Op. 302.

**18. A person who took the regular four years' course at the Naval Academy, and received a certificate of graduation, issued pursuant to the act of August 5, 1882 (22 Stat. 284), is a graduate of the Academy within the meaning of section 20 of the navy personnel act of March 3, 1899 (30 Stat. 1009).** 22 Op. 485.

**19. The exemption as to age limit with reference to the eligibility to appointment in the Marine Corps is not restricted to those who served in such corps, but extends to all graduates of the Naval Academy who served in the war with Spain.** *Ib.*

**20. Members of the graduating class at the Naval Academy who were physically disqualified for naval service and placed among the "surplus graduates," are each entitled under the acts of August 5, 1882 (22 Stat. 285), and March 2, 1889 (25 Stat. 878), to a certificate of graduation, an honorable discharge, and one year's pay, and there is no authority for stating in such certificate the physical disqualification of the graduate.** 19 Op. 358.

**21. Vacancies in the Engineer Corps can not be filled by graduates of the line and Marine Corps division at Annapolis, or vice versa.** 20 Op. 615.

**22. Same.**—No appointments can be made under the act of March 2, 1889 (25 Stat. 878), either to the line or Marine Corps, or to the Engineer Corps, except from graduates of the cadet division whose studies are directed to such appointments, respectively. *Ib.*

**23. Same.**—In case of more vacancies than can be filled in this manner, no appointment can be made during the year in which the deficiency occurs. The act of March 2, 1889 (25 Stat. 878), authorizes appointments from final graduates only. *Ib.*

24. The proviso to the naval appropriation act of March 2, 1895 (28 Stat. 838), authorizing every Representative or Delegate in Congress "whose district or Territory is not now represented at the Naval Academy" to make recommendation on or before March 4, 1895, of a candidate for appointment as a cadet at the Naval Academy was intended to apply to Members of the then existing Fifty-third Congress. 21 Op. 164.

25. Same.—In order to be valid, such a recommendation must be made before 12 o'clock noon of March 4, 1895; and, in consequence, three recommendations considered in the opinion are held to be ineffective. *Ib.*

26. A cadet, nominated to the Naval Academy upon the recommendation of a Member of the House of Representatives who, since the recommendation and nomination, has been unseated by contest of election, can not be lawfully deprived of his place if he passes his examination. 21 Op. 342.

27. Same.—The Secretary of the Navy is not authorized to revoke such a nomination and notify the newly seated member that a vacancy occurs. He has no right to call for a new recommendation, except under section 1516, Revised Statutes, when the candidate fails to pass his examination. *Ib.*

28. Congressman—Number of midshipmen allowed.—A Congressional district is not entitled to have more than two midshipmen at the Naval Academy at any one time; and a Representative in Congress can nominate a midshipman for appointment to that Academy only when there is none or but one from his district. 25 Op. 333.

SEA WALL AT ANNAPOLIS. See CONTRACT, 83.

#### NAVAL COURTS-MARTIAL.

See NAVY, V.

#### NAVAL MILITIA.

See DISTRICT OF COLUMBIA, 70.

#### NAVAL OFFICERS.

See NAVY, II.

#### NAVAL PENSION FUND.

Money benefits due deceased beneficiary.—There is no authority of law for the payment to the personal representatives of a deceased beneficiary of money benefits which may have accrued under sections 4756 and 4757, Revised Statutes, between the date of the last quarterly payment and the date of death; nor may such money be paid to the Naval Home in cases where the beneficiary has been cared for and subsisted by that institution between the date of the last quarterly payment and the date of death. 25 Op. 85.

#### NAVAL REGULATIONS.

See NAVY, VI.

#### NAVAL RESERVATION.

See RESERVATIONS AND PARKS, III.

#### NAVAL STATIONS.

See PORTO RICO, 42; also under the name of the particular station in regard to which information is sought.

#### NAVAL SUPPLIES.

See NAVY, I, f.

#### NAVAL VESSELS.

See NAVY, VII.

## NAVIGABLE WATERS.

## I. Generally.

- a. *What are Navigable Waters of the United States*, 1-6.
- b. *Power of the United States and of the States over*, 7-31.
- c. *Canals*, 32-37.
- d. *Lakes*, 38-39.
- e. *Harbor and Dock lines, etc.*, 40-46.
- f. *Boat Railway*, 47-48.

## II. River and Harbor Improvement.

- a. *Laws, Appropriations*, 49-64.
- b. *Rivers*, 65-84.
- c. *Harbors, Wharves, and Docks*, 85-109.

## III. Obstructions to Navigation.

- a. *Bridges*, 110-164.
- b. *Dams*, 165-169.
- c. *Deposits in Rivers and Harbors*, 170-176.
- d. *Miscellaneous*, 177-182.

## I. Generally.

- a. *What are Navigable Waters of the United States*.

1. All waters in the United States are navigable waters of the United States within the meaning of the acts of Congress, in contradistinction from the navigable waters of the States where they form in their ordinary condition by themselves, or by uniting with other waters, a continuous highway, over which commerce is or may be carried on with other States or foreign countries in the customary modes in which such commerce is conducted by water. 20 Op. 101.

2. The Chicago River and its branches must, therefore, be deemed navigable waters of the United States, over which the commercial power of Congress may be exercised to the extent necessary to protect their free navigation, and it is immaterial that the stream was originally nonnavigable, or artificially constructed, or wholly within one State, or practically controlled by one State or city. *Ib.*

3. The waters of the East River comprise navigable waters of the United States lying wholly within the limits of a State. 20 Op. 479.

4. The St. Louis and Cloquet rivers, being navigable waters of the United States, can be obstructed by dams only by permission

of the Secretary of War, to whom Congress has by express statute given exclusive jurisdiction of the subject. 20 Op. 713; 21 Op. 42.

5. Coastal waters of Cuba.—The acts of June 14, 1880 (21 Stat. 197), and August 2, 1882 (22 Stat. 208), which authorize the Secretary of War to remove sunken vessels or craft which obstruct the navigation of a "navigable" water of the United States, do not apply to the coastal waters of Cuba, as such waters do not become waters of the United States by reason of the temporary jurisdiction of the United States over that island. 23 Op. 76.

6. The coastal waters, harbors, and other navigable waters of the island of Porto Rico are waters of the United States within the meaning and intent of section 10 of the river and harbor act of March 3, 1899 (30 Stat. 1151), although the ratifications of the treaty whereby that island was ceded by Spain to the United States were not exchanged until after the passage of that act. 23 Op. 551.

- b. *Power of the United States and of the States over*.

7. Effect of the power to regulate commerce.—The power to regulate commerce is one of the instances in which the Constitution operates *proprio vigore*, and its effect as to the navigable waters of the Union was to establish them as highways, open to the free and unrestricted use of all persons engaged in foreign or interstate commerce. 18 Op. 405.

8. Whether Congress has spoken or not, the duty of the United States toward commerce in its several departments of traffic, intercourse, and navigation is equally imperative. *Ib.*

9. The power of Congress to regulate bridges over navigable waters is paramount, and where it comes in conflict with that of a State the latter necessarily becomes ineffective. 18 Op. 164.

10. Yet, until Congress acts, and by appropriate legislation assumes control of the subject, the power of a State over bridges across navigable streams within its limits is plenary. *Ib.*

11. A State may authorize a navigable stream within its limits to be obstructed by a bridge in the absence of any legislation by Congress on the subject. 18 Op. 425.

12. The power of the State to legislate in regard to navigable waters is subject to the paramount power in Congress to regulate com-

merce among the several States. Until Congress acts directly in the matter the power of the State is plenary, but when Congress has acted with reference to bridges in the State its will must control so far as may be necessary to secure free navigation. 20 Op. 101.

13. Prior to 1884, no national legislation existed which interfered with the general authority of the States, acting within the limits of law as administered by the courts, to control within their respective boundaries the navigable waters of the United States. *Ib.*

14. The cases illustrating the extension of the doctrine of navigable waters of the United States and the extension of the authority of the United States over said waters reviewed and discussed. *Ib.*

15. The intent of Congress in the first clause of section 7 of the act of September 19, 1890 (26 Stat. 454), as amended by section 3 of the act of July 13, 1892 (27 Stat. 110), was that the navigable waters of the United States should thereafter be under the exclusive control of the United States; that for the future their navigability should be interfered with by bridges, dams, or other obstructions only by express permission of the United States, granted through its agent, the Secretary of War. 21 Op. 42.

22 Op. 52, 54. Approved. *Ib.*

16. The power of Congress over navigable streams is supreme and grows out of the power to regulate commerce. 21 Op. 431.

17. The power of Congress to declare what is an obstruction and to remove it from a navigable stream is well settled. *Ib.*

18. Congress is not required to consider each case of alleged obstruction to navigation and determine the facts and declare that an obstruction exists, but it may generally define the offense and leave the facts to be determined by a court or special tribunal. *Ib.*

19. It is not an unconstitutional delegation of the legislative function for Congress to intrust to the Secretary of War the power to declare what is an unreasonable obstruction to navigation. *Ib.*

20. The absolute power of Congress to regulate commerce, being without limit or extent, includes the power to regulate the use of all means and instrumentalities used in commerce, whether on sea, navigable rivers and lakes, in harbors or on land, irrespective of whether a State has attempted to regulate the same matter or not. 22 Op. 501.

21. Same.—Commerce is not restricted to the purchase and sale of commodities, but includes also navigation, intercourse, and the reception, transportation, and delivery of passengers and freight by land and water, and also the means and instrumentalities used in such commerce. *Ib.*

22. The power of the United States to regulate commerce is general, absolute, and without limit, either as to the time, place, or detail of its exercise, except as to waters whose entire navigability for commerce is limited to the confines of a single State. 22 Op. 646.

23. This power includes the right to regulate the use of all the means and instrumentalities used in commerce, whether on sea, river, harbor, or land, and entirely irrespective of whether a State has attempted to regulate the same matter or not. *Ib.*

24. Congress has power to improve the navigation of the Ohio River, and for that purpose may actually take such property as is requisite, and may cause the abatement and prostration of all structures which, in its judgment, interfere with its plan of improvement. 22 Op. 343.

25. Congress has the power to establish harbor lines or modify existing ones in navigable waters within the limits of a State, although such State has already established such harbor lines. 22 Op. 501.

26. Whenever Congress in the exercise of its power to regulate commerce makes any rule or regulation in harbors or elsewhere, such regulations necessarily supersede any that the State may have made on the same subject within its limits. *Ib.*

27. Congress has power to regulate and improve the harbors of the navigable waters of the United States, and this carries with it the right to deposit the material removed in making the improvements in any other part of the harbor or navigable waters or other place within its control. 22 Op. 646.

28. A State or a municipality has and may exercise jurisdiction over the improvement of harbors until the Federal Government indicates its intention to do so, or exercises its jurisdiction; but whenever the latter is done it is exclusive of every other jurisdiction, control, or interference. *Ib.*

29. The right of the United States to occupy and use soil within the bed of a river for the improvement of its navigation affirmed. 18 Op. 64.

**30. Same.**—The fact that a piece of land within the course of a river becomes dry in consequence of its improvement does not impair the original right of the United States to deal therewith or raise any question of eminent domain, such lands being held by the owners subject to the higher rights and duties of the United States in regard to navigation. *Ib.*

**31. Porto Rico.**—The United States may establish aids to navigation on submarine sites under navigable waters of Porto Rico without cession of jurisdiction having first been made by Porto Rico to the United States. 25 Op. 166.

*c. Canals.*

**32.** If the proposed canal between Port Arthur, Tex., and the Sabine Pass is one of the works provided for in section 3 [7] of the act of July 13, 1892 (27 Stat. 110), making it unlawful, without the authority and permission of the Secretary of War, for anyone to build or construct any of the works therein mentioned in or over any of the navigable waters of the United States that would obstruct or impair the navigation of said waters, the Secretary of War has authority to authorize and permit its construction. 21 Op. 531.

**33. Ship Canal—Sabine Lake and Sabine Pass.**—Clause 2 of the proviso to section 3 [7] of the act of July 13, 1892 (27 Stat. 110), does not limit the authority of the Secretary of War to grant permission for the construction of a ship canal and works of like character in navigable waters which lie wholly within the limits of one State. 22 Op. 332.

**34. Same.**—Under the power conferred upon Congress by the Constitution to regulate commerce, the United States has the right to control all structures and works which interfere in any manner with the navigable capacity of the navigable waters of the United States which, either by themselves or in connection with other waters, form channels for interstate commerce. *Ib.*

**35. Same principles apply to canals as apply to bridges, railroads, etc.**—Canals being artificial waterways or means of commercial transportation, as well as natural lakes and rivers, the same principles may be applied to them that are applied to bridges, turnpikes, streets, and railroads. *Ib.*

*See also CANALS.*

**36.** The contract between the United States and James B. Eads and his associates

for the construction of a ship canal between the South Pass of the Mississippi River and the Gulf of Mexico, construed; and opinions of Attorney-General Devens (16 Op. 335) and Acting Attorney-General Phillips (17 Op. 137) as to the width and characteristics of channel required to be maintained concurred in. 21 Op. 29.

*See also II, b.*

**37. Tolls abolished.**—The effect of the provision in the river and harbor act of August 2, 1882 (22 Stat. 209), which declared "that no tolls or operating charges whatsoever shall be levied or collected upon any vessels, boats, dredges, craft, or other water craft passing through any canal or other work for the improvement of navigation belonging to the United States" was to abolish the tolls theretofore levied by the Government upon vessels passing through the works of the Fox and Wisconsin rivers. 18 Op. 191.

*d. Lakes.*

**38. The Great Lakes are high seas** within the meaning of the act of August 19, 1890 (26 Stat. 320). 21 Op. 106.

**39. Ownership of land in bed of Lake Huron, Mich.**—*Seem* that the proprietors of land adjacent to Lake Huron, Michigan, have no legal right to stone taken from the bed of that lake, in front of their property, by other persons, and delivered by the latter on the Government works—the ownership of such bed being apparently in the State. Under the circumstances presented, the claim of such proprietors for the stone so taken and delivered may properly be resisted by the United States officer in charge of the works. 17 Op. 59.

*e. Harbor and Dock Lines, etc.*

**40. Harbor lines.**—The determination of the question whether the establishment of a certain harbor line is essential to the preservation and protection of a harbor rests, under section 12 of the act of September 19, 1890 (26 Stat. 453), in the discretion of the Secretary of War alone, and his judgment in the matter is final and conclusive until subsequently modified by himself. 20 Op. 740.

**41.** The Secretary of War has the power to establish a harbor line for the Tacoma Harbor or modify the existing one in the harbor of Seattle, as he shall determine, if in his opin-



ion the interests of commerce and navigation so require. 22 Op. 501.

42. Congress has the power to establish harbor lines or modify existing ones in navigable waters within the limits of a State, although such State has already established such harbor lines. *Ib.*

43. Whenever Congress in the exercise of its power to regulate commerce makes any rule or regulation in harbors or elsewhere, whether in establishing harbor lines or otherwise, such regulations necessarily supersede any that the State may have made on the same subject within its limits. *Ib.*

44. The fact that harbor lines have once been established is no bar to the exercise of the same power as often as the needs of commerce require. *Ib.*

45. Dock lines interfering with harbor improvements.—It is the duty of the War Department to direct proceedings to be taken to enjoin the construction of a "dock line" which will obstruct, encroach upon, or interfere with harbor improvement. 17 Op. 279.

46. Dividing lines.—The power and authority to designate lines dividing the high seas from rivers, harbors, and inland waters, conferred upon the Secretary of the Treasury by section 2 of the act of February 19, 1895 (28 Stat. 672), was, by section 10 of the act of February 14, 1903 (32 Stat. 829), transferred to the Secretary of Commerce and Labor. 25 Op. 149.

#### f. Boat Railway.

47. The Secretary of War has full authority, under the river and harbor act of August 18, 1894 (28 Stat. 359), and the act of April 24, 1888 (25 Stat. 94), to condemn whatever land may be needed for the construction of the boat railway provided for in the former act. 21 Op. 225.

48. If a change in the location of an existing railway is a necessity in the building of said boat railway, the acquisition by the Secretary of War of the necessary land to make such change is merely an incident to the enterprise intrusted to him. *Ib.*

REGULATION OF COMMERCE OVER NAVIGABLE WATERS. See I, b.

COASTAL WATERS OF CUBA. See 5.

COASTAL WATERS OF PORTO RICO. See 6.

## II. River and Harbor Improvement.

### a. Laws, Appropriations.

49. Appropriation for improvement of a river does not include authority to purchase of land for such improvement.—The provision in the act of August 5, 1886 (24 Stat. 310, 319), namely: "Improving Great Kanawha River, West Virginia. Continuing improvement, one hundred and eighty-seven thousand five hundred dollars," does not, by implication, authorize the purchase of land for said improvement. 19 Op. 34.

50. Savannah River—Expenditure for widening, without transfer of title.—The \$1,000, authorized by the act of March 3, 1881 (21 Stat. 470), to be expended from the appropriation for improving Savannah River, in the payment of damages for land taken for widening the channel opposite Savannah, Ga., may be expended for that purpose without a transfer of the title to the land, the purpose of the provision being to indemnify for the loss of the land, not to acquire ownership thereof. 17 Op. 455.

51. Performance of work in excess of amount appropriated.—Under section 5 of the river and harbor act of June 3, 1896 (29 Stat. 235), which limits the amount that the Secretary of War can obligate the Government for in any fiscal year to \$400,000, the contractor may perform in one year the work which the contract allows him three years to perform and, although he may thus earn a larger sum than the amount stated, he may not receive full payment therefor under three years. 21 Op. 379.

52. Same.—Where the total amount authorized to be expended is less than \$400,000, contractors may be allowed to earn the amounts authorized to be expended in advance of the appropriation by Congress for such work. *Ib.*

53. Same.—Said section 5 is not limited in its application to cases in which the total amount authorized to be expended is more than \$400,000. *Ib.*

54. Secretary of War not required to enter into contracts for completion of improvements where the statute provides that he may do so.—The Secretary of War is not required by the act of March 3, 1896, providing that contracts may be entered into by him for the completion of improvements named, to make such contracts, but he may decline to do so in all

cases where he is convinced the public interest would not be subserved by making them. 21 Op. 420.

**55. Lump appropriation designating certain amounts for particular improvements.**—The river and harbor act of June 3, 1896 (29 Stat. 230), made a lump appropriation for certain improvements on the Mississippi River, with a provision that of the amount appropriated certain designated amounts should be expended for particular improvements therein named: *Held* that the sums named in the proviso are chargeable to the main specific appropriation. 21 Op. 414.

**56. Same.**—If, however, the appropriation should not be expended the work could at a subsequent time be contracted for by the Secretary of War under a provision in the above-named act for such additional contracts as might be necessary to carry on continuously the plans of the work. *Ib.*

**57. Same.**—If the specific appropriations in the above act are not used for the particular work designated by Congress they can not be used for any other purpose. *Ib.*

**58. Same.**—The direction to expend the sums mentioned in the proviso is not mandatory to the extent that the full amount must be expended if the work can be done for less, or to proceed with it at all contrary to the recommendations of the Mississippi River Commission mentioned in the act. *Ib.*

**59.** The provision of the river and harbor act of June 3, 1896 (29 Stat. 202, 229), making an appropriation for the protection of the east bank of the Mississippi River opposite the mouth of the Missouri River, leaves it to the discretion of the Secretary of War whether he shall make such expenditure or not. 21 Op. 391.

**60.** The indefinite appropriation made by section 4 of the act of July 5, 1884 (23 Stat. 147), for the purpose of preserving and continuing the use and navigation of certain canals, rivers, and other public works named in said act, without interruption, is not applicable to river and harbor improvements generally, but only to a particular class of public works, such as canals, locks, etc., in the use of which both operating expenses and expenses for repairs are necessarily incurred. 18 Op. 188.

**61. Appropriation for improvement of a river above a city** can not be used for improvement

at or in front of that city.—The Secretary of War has no authority to use any portion of the \$170,000 appropriated by the river and harbor act of March 3, 1899 (30 Stat. 1147) for the improvement of the Missouri River above Sioux City, for improvements at or in front of that city. 22 Op. 519.

**62. Authority to construct dredge—Secretary of War.**—The authority conferred upon the Secretary of War by the river and harbor act of June 13, 1902 (32 Stat. 371), to prosecute or complete, "by contract or otherwise," all river and harbor improvements which theretofore or therein were authorized to be constructed or completed under contract, vested in that officer the power to construct the dredge now nearing completion, for use on Lake Michigan, and to pay the cost of the same by allotment from the sums appropriated for the improvement of the various harbors of that lake. 25 Op. 145.

**63. Same.**—The fact that Congress has in other instances made specific appropriations for dredging plants, can not be held to limit the meaning of the words "by contract or otherwise," as used in the act of 1902, by restricting the Secretary to the hiring of a dredge as the only alternative of a contract, nor to forbid that officer from using such dredge upon improvements other than those authorized by appropriations from which the moneys for its construction have been taken. *Ib.*

**64. Appropriation for deepening the channel north of Pelican Island.**—The act of March 3, 1899 (30 Stat. 1128), for deepening the channel north of Pelican Island, from Galveston Harbor to Texas City, Tex., makes an appropriation of \$250,000 for the work.

**65.** There is no authority for paying out of this appropriation any expenses for making the contract, inspecting or superintending the work, unless it be indirectly through a provision in the contract that these expenses shall be paid by the contractors and charged against their compensation. 22 Op. 489.

*See also* II, b—Rivers; and II, c—Harbors.

#### b. Rivers.

**66.** Upon consideration of the statutes relating to the improvement of the South Pass of the Mississippi: *Held* (1) that a navigable depth of 26 feet is thereby required to be maintained through the shoal at the head of the

Pass; (2) that a navigable depth of 26 feet is required to be maintained through the Pass itself; (3) that, in view of the facts set forth by the engineer officer charged with the duty of ascertaining the depth of the channel at these points from time to time, Captain Eads is lawfully entitled to payment for maintenance of the required depth there during the quarter ending May 9, 1881. 17 Op. 137.

67. *Same.*—Payment of amount due the estate of James B. Eads, deceased, for services in connection with the improvement of the South Pass of the Mississippi River, may lawfully be made to James F. How and Estill McHenry, the executors and trustees under his will, if the certificate of the engineer officer in charge shows satisfactorily the performance of the services. 18 Op. 604.

68. *Same.*—The contract between the United States and James B. Eads and his associates for the construction of a ship canal between the South Pass of the Mississippi River and the Gulf of Mexico, construed; and opinions of Attorney-General Devens (16 Op. 335) and Acting Attorney-General Phillips (17 Op. 137) as to the width and characteristics of channel required to be maintained concurred in. 21 Op. 29.

69. *Same.*—Expense of determining actual height of the average flood tide.—If in the judgment of the Secretary of War justice either to the Government or to the contractors on the works at the South Pass channel of the Mississippi River requires him to determine the actual height of average flood tide as a datum of measurement, he has the right to determine such height, and to require the expenses incurred to be provided for by the representatives of James B. Eads, the contractor. 21 Op. 308.

70. *Same.*—The remote possibility that in some way and at some time the crevasse in Pass a Loutre may injuriously affect the channel in South Pass, can not justify the United States in withholding final payment on the contract for opening and maintaining said channel after it has been opened according to contract and shall have been maintained for a period of twenty years. 23 Op. 143.

71. *Same.*—The contractor was under no obligation to close the crevasse, unless it was necessary in order to maintain the channel and protect the works, and the question whether

such necessity exists is one of fact, not of law. *Ib.*

72. *Potomac River*—Title to land—Commencement of work.—The provision in the act of August 2, 1882 (22 Stat. 198), making it "the duty of the Attorney-General to examine all claims of the title to the premises to be improved under this appropriation;" i. e., the appropriation "for improving the Potomac River in the vicinity of Washington," etc., does not forbid the commencement of the work until the Attorney-General shall have performed the said duty. 17 Op. 453.

73. *Same.*—The existence of certain claims of title to the "Potomac flats" is not an obstacle to the expenditure of the appropriation made by the act of July 5, 1884 (23 Stat. 138). 18 Op. 66.

74. *Same.*—Title of the United States to certain parts (Sections II and III, as indicated on map submitted) of the Potomac Flats Improvement considered, and advised that the prohibition contained in the acts of August 5, 1886, chapters 929 and 930 (24 Stat. 335, 336) against the expenditure of money appropriated for the improvement, does not apply to those parts. 18 Op. 437.

75. *Monongahela River*—Expenditure of appropriation.—The clause in the provision of the act of August 5, 1886 (24 Stat. 318), making an appropriation for the improvement of the Monongahela River, which declares that "no charges or tolls shall be collected on any other part of the river on any commerce on said river which originates above the works herein appropriated for," does not impose any condition affecting the expenditure of the appropriation. There is nothing in its language which requires the assent thereto of any person, company, or corporation claiming a right to collect charges or tolls, or the relinquishment by any person, company, or corporation of such right, before the money appropriated can become available for expenditure. 18 Op. 481.

76. *Wing dam, James River, Va.*, erection notwithstanding protest of riparian owner.—The United States has the right, with a view to the improvement of the navigation of the James River, Va., as provided by the act of March 3, 1881 (21 Stat. 474), to place a wing dam in the river in front of the land of a riparian owner who forbids such construction above the line of low water, and such right

extends to the limit of high water—i. e., the line of the water at ordinary high tide (16 Op. 479, 534). 17 Op. 109.

77. **Galena River improvement.**—The Secretary of War is authorized under the river and harbor act of September 19, 1890 (26 Stat. 426, 448), to draw his warrant in favor of the city of Galena, Ill., in payment for the improvement of the Galena River contemplated by that act, notwithstanding the fact that the certificate of such work is signed by the surveyor of customs for that port, instead of the collector of the port, as directed by that act, it appearing that there is no collector of the port at Galena, and that all the duties of that office are imposed upon the surveyor of customs. 20 Op. 700.

78. **Liability of United States for erection of levees along Mississippi River.**—The United States will not render itself liable in damages to persons owning property along the Mississippi River on whose land it proposes to build levees, for the reason that the State of Louisiana is the owner of a servitude or interest in the lands of all riparian owners along that river for the purpose of building levees to restrain its waters within definite limits during flood times, and has surrendered to the United States for that purpose its servitude in the lands in question. 20 Op. 625.

79. **The Chicago River and its branches are navigable waters of the United States,** over which the commercial power of Congress may be exercised to the extent necessary to protect their free navigation, and it is immaterial that the stream was originally nonnavigable or artificially constructed, or wholly within one State, or practically controlled by one State or city. 20 Op. 101.

80. It is the duty of the Secretary of War under section 4 of the act of September 19, 1900 (26 Stat. 453), to ascertain whether in his judgment, the Canal street bridge across the south branch of the Chicago River is an unreasonable obstruction to the free navigation of that river, and in case he decides that it is, to proceed as directed by that statute and require such an alteration of the bridge as will render navigation through and under it safe, easy, and unobstructed. *Ib.*

81. **Same.**—Inasmuch as the plans for the proposed excavation in said river have not as yet been submitted to the Secretary of War for his approval and authorization, he is not

now required by law to give the proceedings consideration. *Ib.*

82. **Chicago River.**—The act of June 3, 1896 (29 Stat. 202, 228), authorizing the Secretary of War to contract for the improvement of the Chicago River "as far as may be permitted by existing docks and wharves," confines the improvements within existing docks and wharves. 21 Op. 471.

83. **The right of the United States to occupy and use soil within the bed of a river for the improvement of its navigation,** affirmed. 18 Op. 64.

84. **Same.**—The fact that a piece of land within the course of a river becomes dry in consequence of its improvement does not impair the original right of the United States to deal therewith or raise any question of eminent domain, such lands being held by the owners subject to the higher rights and duties of the United States in regard to navigation. *Ib.*

*See also* II, a—Appropriations.

#### c. Harbors, Wharves, and Docks.

85. **Galveston Harbor—Expense of construction of railway upon trestlework.**—Under the contract for the improvement of Galveston Harbor, the railway to be built upon trestlework following the line of the jetty must be at the expense of the Government, whether it is the case of original construction or extension. 21 Op. 607.

86. **Same.**—The Government must bear the expense of maintaining the railway upon the original work and upon the extension, after the suspension of operations upon these respectively. *Ib.*

87. **San Pedro Harbor location—Contract.**—The decision of the board appointed under the river and harbor act of June 3, 1896 (29 Stat. 213), to determine the location, etc., of a deep-water harbor for commerce and refuge at either San Pedro Harbor or at Los Angeles, is final, and the contracts of the Secretary of War in relation thereto are to be in accordance with the project reported by that board. 21 Op. 587.

88. **Same.**—The report of the board considered and the conclusion reached that the project reported by them is a breakwater, and that it fulfills the provision of the law and will make within its meaning a harbor for commerce and refuge. *Ib.*

**89. San Pedro, Cal., breakwater.**—The Secretary of War is authorized to award a contract for the construction of a breakwater at San Pedro, Cal., in accordance with the recommendation and the plans and specifications adopted by the board of engineers appointed under the provisions of that portion of the river and harbor act of June 3, 1896 (29 Stat. 213), which provides for a deep-water harbor for commerce and refuge at Port Los Angeles or San Pedro, Cal., the location of the harbor to be determined by the board. 22 Op. 138.

**90.** The project reported by the board is a breakwater which fulfills the provisions of the law and will make a harbor for commerce and of refuge within the meaning of the statute. *Ib.*

**91.** It was not the intention of Congress that out of the appropriation made the harbor should be equipped with piers, jetties, and channels necessary for the highest condition of usefulness and efficiency. *Ib.*

**92.** It was the purpose of Congress to construct a deep-water harbor in the sense of having a sufficient depth of water to accommodate vessels of large draft, but not necessarily vessels of the greatest draft now constructed. *Ib.*

**93.** The Secretary of War is not called upon to make further plans, specifications, or estimates for other work not included within the plans and specifications adopted by the court board. *Ib.*

**94. Harbor at Chicago—Dumping of material taken from.**—The authorities of the city of Chicago have no legal power to prohibit the Government contractors from dumping material dredged from the harbor at Chicago within the limits selected and designated by the Secretary of War, in accordance with the authority conferred upon him by law. 22 Op. 646.

**95. Same—Jurisdiction.**—Congress has power to regulate and improve the harbors of the navigable waters of the United States, and this carries with it the right to deposit the material removed in making the improvements in any other part of the harbor or navigable waters or other place within its control. *Ib.*

**96. Same—State and Federal.**—A State or a municipality has and may exercise jurisdiction over the improvement of harbors until the Federal Government indicates its

intention to do so, or exercises its jurisdiction; but whenever the latter is done it is exclusive of every other jurisdiction, control, or interference. 22 Op. 651.

**97. Harbor line for Tacoma Harbor.**—The Secretary of War has the power to establish a harbor line for the Tacoma Harbor or modify the existing one in the harbor of Seattle, as he shall determine, if in his opinion the interests of commerce and navigation so require. 22 Op. 501.

**98.** Congress has the power to establish harbor lines or modify existing ones in navigable waters within the limits of a State, although such State has already established such harbor lines. *Ib.*

**99.** The fact that harbor lines have once been established is no bar to the exercise of the same power as often as the needs of commerce require. *Ib.*

**100. Oakland Harbor tidal canal—Suspension of improvement.**—The Secretary of War has discretionary authority, under the act of June 3, 1896 (29 Stat. 213), and subsequent acts, making appropriations for the construction of a tidal canal in Oakland Harbor, California, to suspend the work on such improvement when the suspension will best inure to its ultimate completion, but he would not be justified in suspending the work if the only purpose was to delay its completion with the intention of abandoning it. 23 Op. 504.

**101. Same—Suspension because of doubtful expediency.**—A mere doubt as to the wisdom of carrying out a public work authorized by Congress does not justify its suspension and a refusal to complete it. Until such act is repealed it must be assumed to be the deliberate and continuing expression of the will of Congress, and respected as such.

**102. Harbor improvement in Lake Erie—Purchase or construction of a dredge—Duty of Secretary of War.**—The words "*is authorized*" contained in that provision of the river and harbor act of June 13, 1902 (32 Stat. 342), which confers upon the Secretary of War the power to purchase or build a dredge for use in harbor improvement and maintenance in Lake Erie, while equivalent to the word "*may*," are used in a mandatory sense and are binding upon the executive whose duty it is to carry them into effect. 24 Op. 594.

103. Same.—While “may” in any statute is ordinarily to be construed as “shall” or “must” when public rights or interests are concerned, yet the construction depends upon the context of the statute, the test being the intent of the legislature. *Ib.*

104. Harbor at Brunswick, Ga.—The requirements as to time, with reference to the improvement of the outer bar of the harbor at Brunswick, Ga., under the river and harbor acts of 1894 (28 Stat. 342) and 1896 (29 Stat. 208), have been sufficiently complied with in respect to the certificate and payment of \$100,000, and the certificate may now be authorized. 22 Op. 156.

105. There being a question as to the assignment of the contract, all parties may execute an agreement in the nature of a trust to embody a release to the United States as to a present payment and an agreement to release as to future payments, and providing for payment to a trustee for disbursement. *Ib.*

106. As regards the Government and the payment referred to, there is but one valid claim—that of the contractor named in the acts. *Ib.*

107. License for construction of a wharf in the harbor of San Juan, P. R.—Prior to the passage of the Porto Rican act of April 12, 1900 (31 Stat. 77), the Secretary of War had authority, under section 10 of the river and harbor act of March 3, 1899 (30 Stat. 1151), to issue a license for the building and maintenance of a wharf in the harbor of San Juan, P. R., and the rules imposed by section 3 of the resolution of May 1, 1900 (31 Stat. 715), upon the grant of franchises by the Executive Council of that island do not extend to an antecedent license granted by him. 23 Op. 552.

108. Same.—The power to revoke the license so granted is vested in the Secretary of War, and so long as it is unrevoked, the rebuilding of the wharf, under such license, is subject to his control and supervision, and not to that of the Executive Council. *Ib.*

109. Dock line interfering with harbor improvements.—It is the duty of the War Department to direct proceedings to be taken to enjoin the construction of a “dock line” which will obstruct, encroach upon, or interfere with harbor improvement. 17 Op. 279.

See also II, a—Appropriations; also SAMOA.

### III. Obstructions to Navigation.

#### a. Bridges.

110. Niagara River bridge—President no power to consent to or approve.—In the absence of any act of Congress or constitutional provision conferring upon him authority so to do, the President can not officially consent to and approve the erection of the proposed bridge across the Niagara River. 17 Op. 523.

111. Mississippi River bridge at St. Paul.—The provision in the act of July 5, 1884 (23 Stat. 104), fixing the width of the waterway between the spans of the proposed bridge across the Mississippi River at St. Paul, Minn., extends to the entire structure over so much of the river as is ordinarily navigable at some seasons of the year for either boats or rafts. 18 Op. 133.

112. Missouri River bridge at Omaha—Approval of plans for.—The plans for the bridge authorized by the act of March 3, 1887 (24 Stat. 501), to be built across the Missouri River between the cities of Omaha and Council Bluffs, should not be approved by the Secretary of War unless they provide for a structure of sufficient strength to bear trains of cars drawn by locomotives. 19 Op. 29.

113. Approval of location or plan of proposed bridge.—By section 3[7] of the river and harbor act of 1892 (27 Stat. 110), the Secretary of War is authorized to approve or disapprove of the location or plan of a proposed bridge duly authorized by a State legislature over waters wholly within the limits of that State. 20 Op. 479.

114. The waters of the East River comprise navigable waters of the United States lying wholly within the limits of a State. *Ib.*

115. Washington and Arlington Railroad Company bridge over Potomac River.—It is not the duty of the Secretary of War under the act of February 28, 1891 (26 Stat. 789), incorporating the Washington and Arlington Railroad Company, to select or approve of the exact location of the bridge to be built across the Potomac River, but rather to approve the plans, specifications, and materials used, and the manner of construction of such bridge. 20 Op. 549.

116. Same.—It is his duty to refuse to approve the plans for the construction of a bridge at a place so far removed from the

point indicated in the act as to be plainly beyond its scope. *Ib.*

117. *Same.*—He has authority, however, to relocate the bridge as requested by the company, provided the place designated is a reasonable compliance with the terms of the act. *Ib.*

118. *Ohio River bridges—Plans.*—Under the provisions of the acts of December 17, 1872 (17 Stat. 398), and February 14, 1883 (22 Stat. 414), authorizing and regulating the construction of bridges over the Ohio River, the Secretary of War has power to disapprove of the plans of such bridges where he is of the opinion that they would unduly obstruct the navigation of the river. 18 Op. 512.

119. *Franchises.*—The Covington and Cincinnati Elevated Railway Transportation and Bridge Company, authorized by act of May 20, 1886 (24 Stat. 69), to erect a bridge across the Ohio between Covington and Cincinnati, has no power under that act to sell the franchise granted to it thereby. Such power is not to be implied from the words "successors or assigns" in the act. *Ib.*

120. *Construction of bridge by purchasers of the right.*—Where a State has granted authority to construct a bridge over a navigable river, and the location and plan have been approved by the Secretary of War, the question whether the purchasers of such right are authorized to proceed is one which does not concern the Government. 21 Op. 293.

121. *Same.*—The action of a State with reference to the rights of parties among themselves concerning the construction of such a bridge does not affect the interests of the United States so long as the directions of the Secretary of War concerning the location and plan of the bridge are respected. *Ib.*

122. *The power of Congress to regulate bridges over navigable waters is paramount, and where it comes in conflict with that of a State the latter necessarily becomes ineffective.* 18 Op. 164.

123. *Yet, until Congress acts, and by appropriate legislation assumes control of the subject, the power of a State over bridges across navigable streams within its limits is plenary.* *Ib.*

124. *Bridge across Mississippi authorized by Minnesota.*—Accordingly, where a railroad company was authorized by the laws of Minnesota to construct a bridge across the

Mississippi River within the limits of that State: *Held* that, if such authority is unaffected by any law of Congress, the company may act thereunder, though in so doing it will subject itself to the risk of future Congressional interference. *Ib.*

125. *Little Kanawha—State authority in absence of Congressional action.*—Where, under authority of the legislature of West Virginia it is proposed to construct a bridge over the Little Kanawha, a navigable river within the limits of that State, which bridge, if built, will be an obstruction to navigation; but its construction is neither expressly nor impliedly forbidden by any law of Congress. The case is not one which warrants the institution of judicial proceedings for the prevention of obstruction to navigation threatened. 18 Op. 425.

126. *Same.*—A State may authorize the obstruction of a navigable stream within its limits by a bridge, in the absence of any legislation by Congress on the subject. *Ib.*

(*But see* case of Union Bridge Co. v. United States, 204 U. S., 364.)

127. *Monongahela River bridge.*—The Secretary of War is not authorized to approve or disapprove the location and plan of the bridge proposed to be erected over the Monongahela River at Bessemer, Pa. 20 Op. 488.

128.—The authority conferred upon the Secretary of War by section 7 of the river and harbor act of 1890 (26 Stat. 454), is limited to the cases of bridges authorized by State law to be erected over waters, the navigable portions of which lie wholly within the limits of the State. *Ib.*

129. *Same.*—Navigable waters extending beyond the limits of a State should not, under the act of 1890, be bridged without explicit authority from Congress. *Ib.*

130. *Bridges over navigable waters between or extending into two or more States—Approval.*—No general law exists [1892] providing for or permitting bridges to be built over navigable waters which divide or extend into two or more States, nor does any general legislation confer the power of approval upon the Secretary of War as to bridges over such waters. 20 Op. 492.

131. *The Mississippi River in Minnesota, both above and below the Falls of St. Anthony, is a navigable river, not wholly within the limits of any particular State, and can not be bridged*

without the permission of the United States. 22 Op. 52.

Opinions of Nov. 19, 1892 (20 Op. 488), and Jan. 18, 1896 (21 Op. 293), approved. *Ib.*

**132. Plan and location of bridge across boundary waters authorized by acts of the States interested.**—The Secretary of War would not be prohibited from approving the plan and location of a bridge across boundary waters if acts of authorization were passed by the legislatures of the States interested. 22 Op. 332.

**133. Same.**—Clause 2 of the proviso to section 3[7] of the act of July 13, 1892 (27 Stat. 110), does not limit the authority of the Secretary of War to grant permission for the construction of a work of this character to navigable waters which lie wholly within the limits of one State. *Ib.*

**134. Same.**—The words "or other works" in that section are not to be interpreted according to their natural and usual sense, but are restricted to things of the same kind as those just enumerated. *Ib.*

**135. Hudson River Bridge—Construction of—Consent of Congress.**—The Hudson Highland Bridge and Railway Company, a corporation created by the legislature of the State of New York, with authority to construct a bridge across the Hudson River between two points in the State of New York can not lawfully build such bridge without first obtaining the consent of Congress, as required by section 9 of the act of Congress of March 3, 1899 (30 Stat. 1155). 25 Op. 601.

**136. Norfolk and Western bridges over Elizabeth River—Obstruction.**—In the case of the bridges of the Norfolk and Western Railroad Company across the Southern and Eastern branches of Elizabeth River, the facts set forth are insufficient to authorize judicial proceedings against said company in behalf of the United States on the ground that such bridges are an obstruction to navigation. 18 Op. 200.

**137. Rock Island bridge—Extent of repairs to—Authority Secretary of War.**—In expending the appropriation in the act of March 2, 1889 (25 Stat. 963) "for repairs to draw pier of the Rock Island bridge" the Secretary of War is not required to use all of the money appropriated or more than is necessary to do the work properly, bearing in mind that temporary repairs are not always most economical or expedient. 19 Op. 375.

**138. Same.**—In case of doubt as to the necessity of any expenditure, due weight should be given to the judgment of the law-making power as expressed in the appropriation. *Ib.*

**139. Same.**—The refusal of the Chicago, Rock Island and Pacific Railroad Company to contribute to the expense incurred any sum in excess of one-half of what would be necessary to place the existing pier in as nearly as practicable the condition it was in when the bridge was completed, does not relieve the Secretary of War of his duty to make the repairs directed by the above-named act. *Ib.*

*See also BRIDGES.*

**140. Muskingum River bridge at Taylorsville, Ohio.**—The bridge over the Muskingum River at Taylorsville, Ohio, is a nuisance to navigation which ought to be abated. 19 Op. 599.

**141. Same.**—The case of the county bridge over the Muskingum River at Taylorsville, Ohio, on which an opinion of the Attorney-General was given July 19, 1890, (vol. 19, p. 599), distinguished from the case of the bridge of the Baltimore and Ohio Southwestern Railway Company across the same river at Marietta, Ohio, subsequently presented, and that opinion shown to be inapplicable to the latter case by reason of recent statutory amendments affecting it. 19 Op. 676.

**142. Canalstreet bridge over Chicago River.**—It is the duty of the Secretary of War under section 4 of the act of September 19, 1900 (26 Stat. 453), to ascertain whether, in his judgement, the Canal Street Bridge across the south branch of the Chicago River is an unreasonable obstruction to the free navigation of that river, and in case he decides that it is, to proceed as directed by that statute and require such an alteration of the bridge as will render navigation through and under it, safe, easy and unobstructed. 20 Op. 101.

**143. Elements which help to constitute reasonableness.**—The rights of intersecting lines of freight and of travel, the needs and the convenience of residents, and the business movements of all who come and all who go are elements which help to constitute the reasonableness or the unreasonableness of an interfering structure built for their use, but to some extent obstructive to the waterway. *Ib.*



**144. Sakonnet River bridge—State of Rhode Island can not be required to alter.**—The State of Rhode Island is not a person, corporation, or association within the meaning of sections 4 and 5 of the river and harbor act of September 19, 1890 (26 Stat. 453). Consequently the Secretary of War is not authorized to serve notice on the State of Rhode Island requiring it to alter the bridge over the Sakonnet River, R. I., which bridge is the property of that State. 20 Op. 606.

**145. Secretary of War may determine when bridge is an unreasonable obstruction.**—The provision in section 4 of the river and harbor act of September 19, 1890 (26 Stat. 453), that whenever the Secretary of War shall determine that any bridge constructed over "any of the navigable waterways of the United States is an unreasonable obstruction to the free navigation of such waters," he shall give notice to have such obstruction removed or remedied, is not an unconstitutional delegation of the legislative functions. 21 Op. 430.

**146. Alteration without compensation.**—Where a bridge was erected by authority of a State before Congress assumed actual jurisdiction over the river for the purposes of navigation, and it was declared an obstruction to navigation by the Secretary of War under the above act, the owners or parties controlling the bridge may be required to alter it without compensation by the United States for the expenses incurred. *Ib.*

*See also* Union Bridge Co. v. United States, 204 U. S., 364.

**147. When Congress chooses to act, it is not concluded, by anything that the States or that individuals by its authority have done, from assuming entire control of the matter and abating any erection that may have been made and preventing any others from being made, except in conformity with such regulations as it may impose.** *Ib.*

**148. Ohio River bridges—Removal of—Authority of Congress.**—Congress has power to improve the navigation of the Ohio River, and for that purpose may actually take such property as is requisite, and may cause the abatement and prostration of all structures which in its judgment, interfere with its plan of improvement. 22 Op. 343.

**149. Same — Compensation.** — Structures which are unauthorized by law may be summarily removed and without compensation.

Those which are authorized by law can only be removed upon making just compensation, unless the authorization by the Federal Government was accompanied with a reservation of a right to change, modify, or remove. *Ib.*

**150. Baltimore and Ohio bridge over Ohio River.**—The Secretary of War is not authorized under the provisions of section 4 of the act of September 19, 1890 (26 Stat. 453), to require changes to be made in the bridge of the Baltimore and Ohio Railroad Company over the Ohio River at the expense of the owner without compensation, as this act applies only to such bridges as are constructed under the authority of an act of Congress which expressly reserved to Congress the right to require changes or modifications in the structure. *Ib.*

**151. Same.**—If the company itself voluntarily prostrates its bridge, with the intention of constructing another in its place, the Secretary of War has the right to prescribe conditions as to height, length of span, etc. *Ib.*

**152. Ohio River bridges—Alteration of.**—The owners of bridges constructed across the Ohio River under the authority of the act of Congress of July 14, 1862 (12 Stat. 569), which contained no reservation of power in Congress to alter, amend, or repeal the act so as to prevent or remove obstructions to navigation arising from the construction of bridges thereunder (including the Steubenville bridge), can not be required to alter or modify them at their own expense, without compensation. 25 Op. 194.

**153. Same.**—If the Ohio Falls bridge, which was constructed under the act of July 14, 1862 (12 Stat. 569), and the amendatory act of February 17, 1865 (13 Stat. 431), at the time of its construction complied with all the requirements of those acts and did not then interrupt the navigation of the river, there being in neither of those acts any reservation of power to alter, amend, or repeal the acts, the owners thereof can not be required to make such changes therein as the interests of navigation may now demand, at their own expense, without compensation. *Ib.* (195.)

**154. Same—Question of obstruction.**—The question whether that bridge was so constructed as not to interrupt the navigation of the river was necessarily to be determined by the requirements of navigation at that time,

and could not be made dependent upon the interests of future navigation. *Ib.*

155. *Same.*—The express reservation in the act of December 17, 1872 (17 Stat. 398), and the amendatory act of February 14, 1883 (22 Stat. 414), of the power to require the alteration of any bridge constructed under their authority, places beyond question the power in Congress to compel the owners to alter any bridge constructed under the authority of those acts, at their own expense, without compensation, so as to remove all material obstructions to navigation. *Ib.*

156. *Same.*—The authority conferred upon the Secretary of War by section 18 of the act of March 3, 1899 (30 Stat. 1153), to require any bridge constructed over any navigable water of the United States which is an unreasonable obstruction to navigation to be so altered as to render navigation under it reasonably free, easy, and unobstructed, applies to bridges constructed under the authority of acts of Congress, provision having been made in the previous sections of that act for the case of structures of that nature unauthorized by Congress. *Ib.*

157. *Same.*—The power conferred upon the Secretary of War by section 18 of the act of March 3, 1899, is administrative in character and is a lawful delegation of power. *Ib.*

158. *Same.*—The obstructions to navigation which the Secretary of War by section 18 of the act of March 3, 1899, is authorized to prevent or to remove at the expense of the owner, without compensation, are "material" obstructions. *Ib.*

159. The obstructions to navigation contemplated by sections 9 and 10 of the act of August 11, 1888 (25 Stat. 424), are such as pertain to the structure and plan of the bridge, in view of its location. Obstructions caused by failure to promptly open the draw of the bridge for passing vessels are not within those sections. 19 Op. 395.

160. The Attorney-General can not pass upon the question as to whether a bridge is an "unreasonable" obstruction, and its maintenance a violation of law, as its determination involves an examination of all the facts, circumstances, and equities surrounding the case. 19 Op. 676.

161. The question of unreasonableness must be determined in the first instance by the Secretary of War, whose decision is probably subject to review by the courts. *Ib.*

162. *Lehigh Valley Railroad drawbridge over the Passaic River—Closing for repairs.*—Section 5 of the act of August 18, 1894 (28 Stat. 362), does not, of its own force, prohibit the Lehigh Valley Railroad Company from exercising its privilege under the New Jersey statutes of closing its drawbridge over the Passaic River a reasonable time for repairs. 22 Op. 312.

163. *Same.—Drawbridges—Rules and regulations governing the opening.*—Section 5 of the river and harbor act of August 18, 1894 (28 Stat. 362), does not add anything to the law previously in force upon this subject, except that it gives authority to the Secretary of War to adopt rules and regulations to govern the opening of such drawbridges for the passage of vessels and other water crafts, which rules and regulations, when made and published, shall have the force of law. 22 Op. 314.

164. *Same.*—It is the duty of all persons operating such drawbridges to open or cause them to be opened in a reasonable manner and at a reasonable time, consistent with the uses for which draw bridges are constructed, for the passage of vessels. The repair of such draws and of the bridges with which they are connected is also necessary for their maintenance. It is reasonable that a sufficient time should be allowed for such repairs, and if they can not be prosecuted without closing the bridge for a number of successive days, such closing can not be considered an unreasonable interference with navigation. *Ib.*

#### b. Dams.

165. *Dams across Rio Grande for irrigation purposes.*—The Secretary of the Interior had no power, under the act of March 3, 1891 (26 Stat. 1101), providing for the location and selection of reservoir sites on the public lands of the United States and rights of way for irrigating ditches and canals, to grant a right to construct dams across the Rio Grande for irrigation purposes. 21 Op. 518.

166. *Same.*—The control and supervision of the navigable waters of the United States is vested in the Secretary of War. *Ib.*

167. The St. Louis and Cloquet rivers, being navigable waters of the United States, can be obstructed by dams only by permission of the Secretary of War, to whom Congress has by express statute given exclusive jurisdiction of the subject. 20 Op. 713.

**168. Same.**—The St. Louis and Cloquet rivers are navigable waters of the United States, and the Secretary of War had authority to authorize their obstruction by dams, but he can not revoke his permit after large expenditures have been made on the faith thereof. (20 Op. 713, reaffirmed). 21 Op. 41.

**169. Unauthorized dams.**—The remedy of the United States in case of an unauthorized erection of a dam across navigable waters is by injunction, under section 10 of the act of September 19, 1890 (26 Stat. 454), and if the dam has been constructed, also by criminal prosecution. 21 Op. 518.

#### c. Deposits in Rivers and Harbors.

**170. Deposits in Hudson River.**—The authority conferred upon the Secretary of War by the act of June 29, 1888 (25 Stat. 209), to prevent obstructive and injurious deposits within the harbor and adjacent waters of New York City, does not extend to the waters of the Hudson River as far distant from New York Harbor as Troy, Albany, and New Baltimore. 19 Op. 317.

**171. Same.**—The term "tributary waters," as used in that act, covers only such parts of the river as, in a broad sense, can be regarded as connected with that harbor. *Ib.*

**172. Discharge of refuse matter in river.**—It is the duty of the Secretary of War to act upon a petition to have designated the portion of a river within which refuse matter may be discharged, in accordance with the provisions of section 6 of the act of August 18, 1894 (28 Stat. 336), although the navigability of the river will not be affected. 21 Op. 305.

**173. Same.**—The Secretary of War, in deciding this question, should be governed only by considerations affecting the navigation of the river, or which may affect future navigation. *Ib.*

**174. Same.**—The discretion given to the Secretary of War is very broad, and no principles governing it are declared. There is no appeal from his action. These facts impose the obligation of a careful scrutiny of the considerations which should control his judgment. *Ib.*

**175. Deposit of ballast in New York Harbor—Secretary of War can not prevent.**—Neither the Secretary of War nor the supervisor of the harbor of New York has power to prevent the deposit of ballast in New York

Harbor at a distance of more than 3 miles from the shore at low-water mark. 20 Op. 293.

**176.** Although the Attorney-General can not determine, without considering questions of fact, whether or not a bar in Flushing Creek, formed opposite the mouth of a sewer and offering an obstruction to navigation, is such a case as comes within the exception provided in section 6 of the act of August 17, 1894 (28 Stat. 363), the Secretary of War is not precluded from taking such action inviting the attention of the town authorities of Flushing to the matter, as may be advisable. 21 Op. 594.

#### d. Miscellaneous.

**177. Hydraulic mining.**—It is the duty of the United States to take prompt action by an information in chancery to restrain certain hydraulic mining operations in California which are creating obstructions to the navigation of certain rivers in that State. 18 Op. 404.

**178. Same.**—Recommended that the attention of Congress be called to the situation with a view to making it a penal offense to obstruct or impair the navigation of any water under the jurisdiction of the United States. *Ib.*

**179.** The power to regulate commerce is one of the instances in which the Constitution operates *proprio vigore*, and its effect as to the navigable waters of the Union was to establish them as highways, open to the free and unrestricted use of all persons engaged in foreign or interstate commerce. *Ib.*

**180.** Whether Congress has spoken or not, the duty of the United States toward commerce in its several departments of traffic, intercourse, and navigation is equally imperative. *Ib.*

**181. Sunken scow—Contributory negligence.**—The U. S. tug *Resolute*, while passing up the channel near Fort Winthrop at high tide, struck a sunken scow and was damaged. The captain of the *Resolute* knew of the sinking of the scow, its locality, and that boats had been engaged in unloading and trying to raise the boat. At the time of the striking the scow could not be seen, and there was no danger signal to indicate the presence of an obstruction. Held that in view of the fact the master of the *Resolute* knew that tugs had been engaged in unloading and trying to raise the scow, that the harbor master had been notified of the sinking of the scow,

and in view of the imperative requirements of the law and the uniform practice as to keeping danger signals displayed as long as necessary, the master, seeing no danger signal displayed, had the right to suppose that the danger had been removed, and was not negligent in assuming that in this particular case there was no danger where there was no danger signal. 23 Op. 43.

182. Same—Damages.—But if, at the time of the accident, the master of the *Resolute* knew of the danger, or if, under all the circumstances, he ought to have known of it, and he failed to take reasonable and proper care to avoid it, and thus met with the accident, no recovery can be had against the owners of the scow. *Ib.*

DREDGE, CONSTRUCTION OF. *See* 62, 63.

POWER OF THE UNITED STATES OVER. *See* I, b.

TOLLS. *See* 37.

#### NAVIGATION.

1. The Great Lakes are "high seas" within the meaning of the act of August 19, 1890 (26 Stat. 320). 21 Op. 106.

2. The regulations in that act for preventing collisions at sea are applicable to the Great Lakes and to all waters navigable for seagoing vessels connected either with the ocean or with the Great Lakes, whether the connection be by a navigable river or a canal, and are applicable to every kind of steam vessel. *Ib.*

3. Rules 6 and 7 of section 4233, Revised Statutes, relating to river steamers navigating waters flowing into the Gulf of Mexico, and their tributaries, and to coasting steam vessels, etc., navigating bays and inland waters, etc., are abrogated or repealed by the act of 1890 (26 Stat. 320). *Ib.*

4. Sections 12 and 13 of the act of March 3, 1897 (29 Stat. 690), relating to navigation laws, which amend section 4233, Revised Statutes, are special rules duly made by local authority according to the provisions of article 30 of the act of August 19, 1890 (26 Stat. 328). 21 Op. 513.

5. Those portions of the act of 1890 which do not "interfere" with the operation of special rules duly made by local authority according to the provisions of article 30, as construed by the act of February 19, 1895 (28 Stat. 672), are rules for the guidance of American

vessels, not only on the high seas, but also on "all waters connected therewith navigable by seagoing vessels." *Ib.*

6. The provision of section 4234, Revised Statutes, requiring sailing vessels to show a lighted torch on the approach of any steam vessel during the nighttime, was not repealed by section 3 of the act of February 19, 1895 (28 Stat. 672). 21 Op. 227.

7. Navigation laws not extended to Guam.—Congress has not yet extended the laws of the United States relating to entry, clearance, and manifests of steamships, and other similar laws to Guam. 25 Op. 128.

OBSTRUCTIONS TO NAVIGATION. *See* NAVIGABLE WATERS, III.

REGISTRY, TONNAGE, ETC. *See* SHIPPING. VESSELS. *See* SHIPPING; and VESSELS.

#### NAVY.

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1. A minor who at the age of 19, with the consent of his father, enlisted in the Navy, has not the right on coming of age to demand his discharge under the rule which applies to his ordinary civil contracts. 21 Op. 327.

2. *Same.*—The United States have a right to prescribe the rules and conditions under which voluntary or compulsory services are to be rendered by citizens. *Ib.*

3. *Same.*—The period at which persons reach their majority and become *sui juris* with respect to the ordinary affairs of life can not abridge this power of the General Government. *Ib.*

4. *Same.*—If a statute authorizes a minor by enlistment to bind himself during his minority, he can bind himself for a further period. *Ib.*

5. *Same.*—The phrase "other persons" in the act of March 2, 1837 (5 Stat. 153), now section 1416, Revised Statutes, included minors above 18 as well as men of full age. *Ib.*

**b. Bounty.**

6. **Bounty—Navy regulations.**—The regulations of the Secretary of the Navy issued July 1, 1901, pursuant to the act of March 1, 1889 (25 Stat. 781), which act provides a bounty to each person enlisting as an apprentice in the United States Navy, are inconsistent with law and void in so far as they require a refund of the bounty, or any portion of it, in case an apprentice is discharged within a year after his enlistment for disability not incurred in the line of duty. 25 Op. 270.

7. *Same.*—Under section 1547, Revised Statutes, all navy regulations issued since July 14, 1862, require the approval of the President. *Ib.*

**PAY.** See NAVY, I, g.

**c. Discharge.**

8. The words "by reason of absence from his command at the time he became entitled to

his discharge," as used in the first section of the act of August 14, 1888 (25 Stat. 442), "to relieve certain appointed or enlisted men of the Navy and Marine Corps from the charge of desertion," are to be regarded as equally applicable to the date when the term of enlistment of the applicant expired, and to the date when he would have received his discharge along with other enlisted men with whom he served, had he been present. 19 Op. 221.

9. *Same.*—The *proviso* in the third section of that act is applicable to the latter section alone. *Ib.*

**d. Deposit of Savings.**

10. **Paymasters of the Navy may receive from enlisted men or petty officers, for deposit, under the act of February 9, 1889 (25 Stat. 657), accumulated savings of any amount, provided they represent the earnings of such a person as an enlisted man or petty officer in the United States Navy.** 21 Op. 498.

**e. Transportation.**

11. **Government-aided railroads.**—The word "troops," as used in section of the act of July 1, 1862 (12 Stat. 493), providing for the transportation of mails, troops, and ammunitions of war, etc., by Government-aided railroads, includes enlisted men of the Navy. 20 Op. 11.

12. *Same.*—Whether the whole amount of the contract price should be paid the West Shore Railroad Company of New York, for the transportation of enlisted men of the Navy from New York to California, a portion of the distance being over Government-aided railroads, the compensation for transportation over such roads being applicable, under the acts of July 1, 1862 (12 Stat. 489), and March 7, 1878 (20 Stat. 56), to the payment of bonds issued by the United States to aid in building roads, held to be a judicial question. *Ib.*

13. *Same.*—Advised that all compensation earned by the bond-aided railroads should be withheld until the questions of the rights of such roads in the premises are adjusted by agreement under the terms of the law or are judicially determined. *Ib.*

14. The methods adopted in settling accounts for transportation of the Army under the act of March 3, 1879 (20 Stat. 420), are not applicable to accounts for the transportation of en-

listed men of the Navy and Marine Corps. 21 Op. 297.

15. The Navy Department is authorized to pay for the actual subsistence of the enlisted men of the Navy employed in taking care of and preserving the stores and other Government property placed on exhibition at the World's Columbian Exposition under the supervision of the Navy Department and in pursuance of law. 20 Op. 577.

16. *Same.*—The expenses necessarily accruing out of the transportation and subsistence of the marines detailed for that purpose may be paid from the fund provided for the Marine Corps and its subsistence. *Ib.*

*i. Supplies, Equipment, Ordnance.*

17. **Contracts for supplies—Award.**—The Secretary of the Navy is obliged to award contracts for supplies to the lowest bidder who complies with the requirements as to security, etc., but he is charged with the duty of ascertaining the facts in this regard, and his decision is not reviewable by any court. 21 Op. 56.

18. Under sections 3709 and 3718, supplies of every name and nature for the Navy are to be purchased by contract upon advertisements, except in cases when the public exigency will not permit of delay, and then by open purchase as between individuals. 21 Op. 181.

19. **Contract for supplies—Advertisement.**—A contract with the Maxim-Nordenfelt Company for the manufacture and delivery to the Navy Department of 100 guns, the manufacture of materials to be subject to the inspection and approval of the Department, supplemented by an agreement providing for the manufacture of the guns at the Naval Gun Factory in Washington, D. C., and for keeping an account of the cost of labor involved, in order to arrive at the remuneration ultimately to be paid the Maxim Company, is a contract for supplies to the Navy Department, and not for services, and a contract with another company for the manufacture of any of said guns may be made by that Department as a contract for ordnance, under section 3721, Revised Statutes, without submitting the matter to competition by public advertisement as required by section 3709, Revised Statutes. 21 Op. 577.

20. **Purchase of patent rights—Ordnance.**—The Secretary of the Navy is not prohibited

by section 3718 of the Revised Statutes from contracting with an ensign of the Navy for the purchase of patent rights and improvements in B. L. R. ordnance for use in the Navy, where the ensign was not employed to make experiments, paid for his own patent, and was afforded no facilities by the Board of Ordnance for the improvement of his invention. 20 Op. 329.

21. *Same.*—Section 3721, Revised Statutes, and not section 3718, applies to this case. *Ib.*

22. **Frauds in supplying equipment—Compensation of person furnishing evidence.**—The Secretary of the Navy is authorized, by implication from statutes authorizing him to enter into contracts for certain equipment, to contract for the compensation of persons furnishing information of frauds practiced upon the Government in supplying such equipment, the compensation to be regarded as money paid for inspectors' wages or for detective work. (Sec. 3732, Revised Statutes, considered in connection with 15 Op. 235, 240.) 21 Op. 1.

*g. Appropriations.*

23. Unexpended balances of moneys appropriated for the pay of the Navy and Marine Corps for the fiscal year ending June 30, 1884, are not available for payment of the Navy and Marine Corps for services rendered during the fiscal year ending June 30, 1885. 18 Op. 412.

*See also VII.*

**II. Officers.**

*a. In General.*

24. The Secretary of the Navy has authority to detail men to guard and protect property of the Government placed on exhibition at the World's Columbian Exposition. 20 Op. 576.

25. **Secretary to the Admiral—Appointment.**—The appointment of the secretary allowed the Admiral of the Navy by section 1367, Revised Statutes, does not belong to the President, with the advice and consent of the Senate, but devolves upon the Admiral as one personal to himself; and the contemporaneous continuation of the statute and uniform practice thereunder by the executive branch of the Government have accorded with this view. 19 Op. 589.

**26. Paymaster of the fleet—Designation and pay.**—No designation other than that made by the President entitles a naval paymaster to the place and perquisites of paymaster of the fleet. 18 Op. 156.

**27. Paymasters of the Navy may receive from enlisted men or petty officers, for deposit, under the act of February 9, 1889 (25 Stat. 657), accumulated savings of any amount, provided they represent the earnings of such a person as an enlisted man or petty officer in the United States Navy.** 21 Op. 498.

**28. Paymasters' clerks assigned to sea duty, not being classified by the President's order of May 6, 1896, while those performing similar services in offices on shore were classified by that order, there is no authority for the transfer of one of the former to a similar position in the Navy Department.** 21 Op. 503.

**29. Medical Corps—Assistant surgeons—Examinations.**—The custom and practice of the Navy Department requiring competitive examinations of assistant surgeons, and assigning them positions on the Navy Register in the order of relative merit as ascertained and reported by the board of examiners authorized by existing law and regulations, is not under the present law (sec. 1480, R. S.; act of Feb. 27, 1877) correct; the effect of such law being to adopt the rule of seniority in regard to promotions from one grade to another in the Medical Corps of the Navy. 17 Op. 48.

**Chief Engineers.** See NAVY, II, d. (2).

b. *Appointment, Advancement, Promotion, etc.*

**30. Appointment—Officers of the line and staff.**—The President may appoint the officers of the line and staff of the Navy authorized by the act of May 4, 1898 (30 Stat. 369), without the advice and consent of the Senate. 22 Op. 82.

**31. Same—Commission—Signature of the President.**—A commission issued pursuant to the foregoing act should show upon its face that it is the commission of the President, but his actual signature is not necessary. The document should declare the act to be that of the President, performed by the head of the Navy Department as his representative. *Ib.*

**32. Appointment—Chief of Bureau of Yards and Docks.**—An officer of the Corps of Engineers, not below the relative rank of captain, is eli-

gible for appointment as Chief of the Bureau of Yards and Docks. 22 Op. 47.

See also NAVAL ACADEMY.

APPOINTMENT OF SECRETARY TO THE ADMIRAL. See NAVY, 25.

PROMOTION OF OFFICERS ON RETIRED LIST. See NAVY, II, c.

**33. Designation and pay—Naval paymaster.**—No designation other than that made by the President entitles a naval paymaster to the place and perquisites of paymaster of the fleet. 18 Op. 156.

**34. Nominations for advancement.**—The President has power to nominate for advancement, and to submit such nomination to the Senate for confirmation, temporary officers of the Navy recommended by the Sicard Board for advancement for especially meritorious services, although at the time of such nomination such officers may have been honorably discharged from the naval service. 23 Op. 413.

**35. Same—Senate's approval—Nunc pro tunc advancement.**—Such nomination is, in effect, if approved by the Senate, a *nunc pro tunc* advancement of the officer. It is of a date and operates at a time when the officer was in the temporary service of the Government, and is not open to the objection that it amounts to the advancement of an officer who is no longer in the service. *Ib.*

**36. Advancement — Reconsideration.**—Where, under the provisions of section 1506, Revised Statutes, an officer was advanced in numbers by the President, with the advice and consent of the Senate, for eminent and conspicuous conduct in battle or extraordinary heroism, such action is conclusive upon the Executive Department of the Government, and is not subject to reexamination or revision by a succeeding President. 17 Op. 76.

**37. Advancement—Confirmation—Status—McCalla—Pillsbury—Rittenhouse.**—On August 10, 1898, Commodore William T. Sampson was advanced eight numbers by the President and appointed a rear-admiral; Capt. John Philip was similarly advanced five numbers and appointed a commodore; Commander Bowman H. McCalla was likewise advanced five numbers and appointed a captain, all to take rank from date of appointment. None of these appointments was confirmed by the Senate. Lieut. Commander John E. Pillsbury was appointed a "com-

mander from the 10th day of August, 1898, *vice* Commander Bowman H. McCalla, *advanced and promoted*," which appointment was confirmed by the Senate December 14, 1898. Lieut. Hawley O. Rittenhouse was nominated and confirmed by the Senate to be a lieutenant-commander *vice* Pillsbury and other officers in line likewise promoted. On August 10, 1898, there was no vacancy in the grade of commander to which Pillsbury could have been appointed unless the advancement of McCalla was confirmed. *Held* that (1) the advancement and promotion of Sampson, Philip, and McCalla by the President alone, not being confirmed by the Senate, did not create vacancies in their respective offices. (2) As the Senate could not increase the number of commanders, the confirmation of Pillsbury necessarily either removed McCalla or it promoted him, and the Senate has said which it was, "in the place of McCalla, *advanced and promoted*." Therefore the appointment and confirmation of Pillsbury operated to duly advance, promote, and confirm McCalla to be a captain, and it created a vacancy which made regular the appointment and confirmation of Pillsbury, Rittenhouse, and other successive appointments. (3) The confirmation of an officer nominated for promotion may be made as well by the appointment and promotion of his successor as in any other way, provided it shows the assent of the Senate to such promotion. (4) Those below McCalla were promoted to fill vacancies, none of which existed prior to December 14, 1898, when the Senate confirmed Pillsbury. Therefore the act of June 22, 1874 (22 Stat. 191), does not apply to entitle them to pay in the higher grades from the time they took rank, respectively. 23 Op. 30.

**38. Promotion—Age limit before action thereon.**—Where, upon the retirement of a rear-admiral, a commodore next in line was nominated to be a rear-admiral to fill the vacancy, and before action thereon by the Senate, the said commodore attained the age of sixty-two years and was retired, under section 1444, Revised Statutes, as a commodore, *advised* that, according to the law and usage of the service, that officer was entitled, by relation, to be a rear-admiral from the date when the vacancy occurred, and to receive the pay of a rear-admiral from that date, and, if the Senate

should confirm his nomination, he might be commissioned as a rear-admiral and placed on the retired list as of that grade. 18 Op. 393.

**39. Promotion—Volunteer service.**—W. was appointed an acting third assistant engineer in the volunteer Navy February 8, 1862, and performed sea service continuously until May 20, 1864, when he was made a third assistant engineer in the regular Navy, and completed two years of sea service as such January 1, 1867. He was promoted to the grade of second assistant engineer October 6, 1869, to take rank from January 1, 1868. On July 1, 1870, he completed two years' sea service in the latter grade, and on March 12, 1875, was promoted to the grade of passed assistant engineer, to take rank from October 29, 1874: *Held* that the credit of his volunteer service, under section 1412, Revised Statutes, does not entitle him to the benefits claimed therefor as regards promotion to or pay in his present grade, his volunteer service having been performed in a different grade from the one from which last promoted. 17 Op. 401.

**40. Promotion.**—Section 1461, Revised Statutes, gives to naval officers on the retired list a right to promotion on that list as their several dates on the active list are promoted. 17 Op. 36.

**41. Same.**—The word "entitled" in section 1461, Revised Statutes, can not be construed as giving to the President the right of selection in determining who are and who are not entitled to promotion on the retired list of the Navy. *Ib.*

**42. Same.**—A practical effect of the law which would be undesirable can not be allowed to overcome its expressed terms. *Ib.*

**43. The right to promotion**, inhering in one who is a commissioned officer, is, under existing legislation, in the nature of a vested right, subject, nevertheless, to being defeated in accordance with the provisions of the laws. 20 Op. 433.

**44. The promotion of Lieutenant McLean to fill a vacancy created by the order of the President**, dated July 1, 1899, retiring certain officers under sections 8 and 9 of the naval personnel law of March 3, 1899 (30 Stat. 1006), and his commission, should be dated July 1, 1899, and he is entitled, from and including that date, to the grade, rank, and emoluments indicated by his commission. 22 Op. 657.



**45. Promotion**—"Wounds received in the line of his duty."—The expression "wounds received in the line of his duty," found in section 1494, Revised Statutes, which provides for the promotion of officers of the Navy whose physical disqualifications do not incapacitate them for other duties, means precisely what it says—namely, wounds received in the line of duty—and is not restricted to any particular part of that duty, as to wounds received in battle or in some hazardous enterprise. 23 Op. 324.

**46. Same.**—An officer thus disqualified for sea duty is eligible for promotion if his wounds do not incapacitate him for other duties in the grade to which he seeks promotion. *Ib.*

**47. Same.**—"Other duties."—The words "other duties," in section 1494, Revised Statutes, refer to duties other than duties at sea. *Ib.*

*See also* NAVY, III, b; MARINE-HOSPITAL SERVICE.

**48.** The restoration of the name of an officer of the Navy to its proper place on the navy list, from which it was illegally removed, affects and disturbs the relative positions of other officers subsequently advanced, whose names have been placed on the list in accordance with the belief that such removal was legal. 17 Op. 21.

**49. Same.**—Such illegal order was not a dismissal from the service, and the restoration order did not restore the officer to the service. In a legal sense his name was always upon the list, although by error it was omitted in the register. *Ib.*

**50. Same.**—In such cases the only rule that can be adopted is to treat such officer as having always been nominally what he was really, an officer of the United States; and if positions have been arranged in regard to the rank of other officers upon the theory that he was not an officer, those positions should be so altered as to rectify the error thus committed. *Ib.*

**51. Same.**—The controlling word in the nomination and confirmation of an officer of the Navy for advancement by definite number to take rank after a particular person named, is the number of the "numbers" which the officer is to be advanced, and not the

name of the person after whom he is to take rank. *Ib.*

*c. Retirement, Dismissal.*

**52. Retired**—Reexamination of, by medical board.—The Secretary of the Navy, in 1878, was not authorized by law to submit the case of Surgeon Thomley, who was retired under section 3 of the act of February 21, 1861 (12 Stat. 150), to a medical board for reexamination as to the origin of the disability for which he was retired, and his decision, based upon the report of that board, is without legal effect as regards the cause for the retirement of that officer or his right to pay. 17 Op. 178.

**53. Retired officers**—Employment in clerical position.—The Secretary of the Navy is not precluded by section 2 of the act of July 31, 1894 (28 Stat. 205), from employing a retired officer, under the act of February 19, 1897 (29 Stat. 565), to supervise the completion of certain tables of planets, as the act authorizing the expenditure does not create an office or contemplate any formalities in the selection of such an employee. 21 Op. 507.

**54. Same.**—The person to be employed may be designated either by order of the Secretary of the Navy or the head of the bureau having charge of the work to be done, which order need only designate the person selected as a competent mathematician and the compensation he is to receive. *Ib.*

**55. Attempted retirement.**—Where the Secretary of the Navy by order retired, or attempted to retire, an officer of the Navy who had served intermittently, but not continuously, for forty years, and no appointment had been made to the place vacated, the officer must be regarded as still on the active list of the Navy. 21 Op. 103.

**56. Voluntary or compulsory retirement.**—The provisions of the act of March 3, 1899 (30 Stat. 1004, 1006), relative to voluntary or compulsory retirement, applies to the current year ending June 30, 1899, as well as to any fiscal year in the future. 22 Op. 380.

**57. Retirement, order of.**—The voluntary retirement of officers of the Navy under section 8 of the Navy Personnel act of March 3, 1899 (30 Stat. 1006), and the compulsory retirement of such officers under section 9 of that act, are to be made in the order of the rank of the applicants, regardless of the grade they are in. 25 Op. 452.

58. **Same.**—The word “casualties” in section 9 of the above-named act, refers, as ordinarily understood, to death, resignation, or dismissal, and does not include promotion. *Ib.*

59. **Same.**—The vacancies caused by promotion to extra numbers, under the act of March 3, 1901 (31 Stat. 1108), should not be counted in determining the average vacancies enumerated in section 8 of the Navy Personnel act of 1899. *Ib.*

60. **Retirement—Vacancy.**—The order of the President, dated July 1, 1899, retiring certain officers under sections 8 and 9 of the naval personnel law of March 3, 1899 (30 Stat. 1006), had the effect to retire Lieutenant-Commander Driggs on June 30, 1899, and thus created a vacancy during the fiscal year ending with that date. 22 Op. 657.

61. **Same—Promotion—Date of commission.**—The promotion of Lieutenant McLean to fill such vacancy, and his commission, should be dated July 1, 1899, and he is entitled from and including that date to the grade, rank, and emoluments indicated by his commission. *Ib.*

62. **Same.**—Vacancies occurring through retirements, as provided under the naval personnel law of 1899, are to occur or be accredited to the fiscal year which ends with the 30th of June of that year. *Ib.*

63. **Retirement—Rank and pay of pay director and medical director.**—Under section 11 of the naval-personnel act of 1899 (30 Stat. 1007), the pay director and medical director will be retired with the rank and three-fourths the sea pay of the next higher rank, which is that of a rear-admiral, although this will result in a higher relative rank than that to which they are entitled in the active service. 22 Op. 433.

64. **Same.**—The highest officer in the Medical Corps being a medical director having the relative rank of captain, it is impossible to promote him to a higher place in such corps, though he may have a higher rank conferred upon him than that of captain. *Ib.*

65. **Same.**—A medical director who had been retired with the relative rank of rear-admiral, if recalled to the service, would enter with the rank and pay of a rear-admiral, but he would enter only in the Medical Corps and as a medical director. *Ib.*

66. **Retired on furlough—Transfer with increase of pay.**—An officer retired on furlough pay under section 1454, Revised Statutes, can not be transferred on the retired pay list under section 1594, Revised Statutes, with increase of pay, such increase being forbidden by the act of August 5, 1882 (22 Stat. 286). 18 Op. 96.

67. **Same.**—Nor can an officer be simultaneously retired on furlough pay, and transferred to the retired pay list, so as to give him the pay of the latter. *Ib.*

68. **Retirement of a captain while chief of Bureau of Navigation—Rank—Pay.**—A captain in the Navy who was appointed chief of the Bureau of Navigation, with the relative rank of commodore, should, in case of his retirement during his incumbency in that office and while borne on the Navy Register as captain, be placed on the retired list with the rank of captain. He would then be entitled to 75 per centum of the sea pay of officers of that rank. 17 Op. 154.

69. **Dismissal on sentence of court-martial.**—Where a paymaster in the Navy was sentenced to dismissal by court-martial, and it appeared by the order of the Secretary of the Navy that the President approved the finding of the court and directed the sentence to be carried into effect, but the President's own signature was not attached to the order: *Held* that the officer was legally dismissed from the naval service. 17 Op. 43.

#### d. Rank and Pay.

##### 1. Rank.

70. **Rank.**—A volunteer officer transferred to the regular Navy is not entitled to hold a commission dated as of the date of his volunteer commission, but he must take his place upon the Navy Register according to the rank given him by his commission as an officer of the regular Navy. 17 Op. 189.

71. **Same.**—Construction of section 1412, Revised Statutes, as given in 14 Op. 192, 358, and 15 Op. 45, namely, that it gives to transferred officers of the Navy the full benefit of their former sea service only in so far as this may go to complete the period of such service required in their respective grades previous to examination for promotion, and in so far as it ought properly to be taken into account in the matter of assignment to duty—reaffirmed. *Ib.*

**72. Actual rank.**—Engineer officers who attained the relative rank of commander prior to the passage of the personnel act of March 3, 1899 (30 Stat. 1004), became entitled, under the first sentence of section 2 of the act, to take that actual rank in the line of the Navy. 22 Op. 449.

RANK AND PAY OF A CAPTAIN RETIRED  
WHILE CHIEF OF BUREAU OF NAVIGATION.  
*See* NAVY, 68.

**73. Relative rank—Length of service.**—The concluding clause of section 1486, Revised Statutes, which provides that "officers who have been advanced or lost numbers on the Navy Register shall be considered as having gained or lost length of service accordingly," as applied to officers of the line in the Navy who were promoted by selection under the act of July 25, 1866 (14 Stat. 222), can not be held to operate as a degradation of an officer over whom another officer had been promoted, or to deprive him of a right already acquired by honorable length of service. 17 Op. 56.

**74. Same.**—The officer promoted will be considered as having gained length of service according to his promotion, but the other officer will not be considered to have lost anything in length of service, the effect of the promotion upon the latter being purely an incidental one. *Ib.*

**75. Relative rank.**—The granting of a pardon to a naval officer for the purpose of restoring him to his original position on the Navy list, under the belief that a nomination intended to accomplish that end had failed because it had not been directly confirmed by the Senate, but which, in reality, had been confirmed by the advancement of another officer nominated at the same time, did not operate to advance such officer beyond the relative position he originally held on the list. 24 Op. 606.

**76. Same.**—The effect of a pardon is to put an end to the infliction of further punishment. In the present instance it merely operated to end any doubt there might be as to the legality of the restoration of such officer to his original position. *Ib.*

**77. Relative rank.**—Under the practical interpretation of section 423, Revised Statutes, naval constructors are treated as officers

of the Navy and their relative rank as the actual rank or grade required by that section. 22 Op. 47.

**78. Relative rank—Pay director and medical director.**—Under section 11 of the naval-personnel act of 1899 (30 Stat. 1007), the pay director and medical director will be retired with the rank and three-fourths the sea pay of the next higher rank, which is that of a rear-admiral, although this will result in a higher relative rank than that to which they are entitled in the active service. 22 Op. 433.

**79. Same.**—The highest officer in the Medical Corps being a medical director having the relative rank of captain, it is impossible to promote him to a higher place in such corps, though he may have a higher rank conferred upon him than that of captain. *Ib.*

**80. Same.**—A medical director who had been retired with the relative rank of rear-admiral, if recalled to the service, would enter with the rank and pay of a rear-admiral, but he would enter only in the Medical Corps and as a medical director. *Ib.*

**81. Relative rank of officers—Maj. Charles H. Lauchheimer—Maj. Charles H. McCauley.**—Under the act of March 3, 1899 (30 Stat. 1004), reorganizing the personnel of the Navy and Marine Corps, Charles H. Lauchheimer, a captain of the line in the Marine Corps, was, upon the date of the passage of that act, appointed and commissioned assistant adjutant and inspector with the rank of major, and on March 11, following, took the oath of office. On March 23, 1899, Charles H. McCauley, a captain and adjutant quartermaster in the Marine Corps, was promoted to assistant quartermaster, with the rank of major, to take rank from March 3. He took the oath of office on March 30. The question of the relative rank of these officers being presented for examination, held (1) That the advancement of an officer to a higher grade, one to which he could not then succeed in due course by seniority, while called an appointment, is, in fact and effect, a promotion. Major Lauchheimer's advancement should therefore be taken as a promotion, and there is nothing in this regard to affect their relative rank. (2) As Major Lauchheimer's commission and induction into office each antedate by several days that of Major McCauley's, during that period the former ranked the

latter. This rank was not lost nor a superior one conferred by the subsequent promotion of Major McCauley. (3) As both officers were, in fact, promoted, the earlier commission and rank of Major Lauchheimer entitle him to precedence in rank. 23 Op. 155.

**82. Same.—Determination of relative rank of naval officers.**—The Secretary of the Navy, by virtue of his general power under the President to make rules and regulations for the government of the Navy, may determine, with the force and effect of law, the relative rank of naval officers. Usually this is better done by general rules than by decisions in particular cases, but it may be done either way. 23 Op. 156.

RELATIVE RANK OF OFFICERS OF THE MARINE CORPS AND OFFICERS OF THE LINE OF THE NAVY. *See* NAVY, III, d.

RELATIVE RANK IN CASE OF RESTORATION OF NAME OF OFFICER TO NAVY LIST. *See* NAVY, 48–51.

## 2. Grade.

**83. Grade.**—There is but one grade of chief engineers in the Navy, and the division of the seventy chief engineers into “three grades” by relative rank, as provided for in sections 1390 and 1476, Revised Statutes, creates merely three classes of chief engineers of the same grade. 20 Op. 358.

**84. Same.**—The relative rank among the chief engineers changes with their seniority in that grade. Such change may be indicated by a notification from the Secretary of the Navy, and does not require examination, new appointment, or confirmation by the Senate. *Ib.*

**85. Same.**—Promotion to the grade of assistant engineer from that of first assistant engineer requires examination under sections 1493 and 1496, Revised Statutes. *Ib.*

**86. Medical Corps—Passed assistant surgeon—Assistant surgeon.**—In the organization of the Medical Corps of the Navy a passed assistant surgeon and an assistant surgeon are officers of one and the same grade, but belong to different classes in such grade. 19 Op. 169.

**87. Same.**—A passed assistant surgeon is simply an assistant surgeon who has been officially notified that he has passed successfully the examination necessary to be under-

gone before he can be appointed a full surgeon when a vacancy occurs. *Ib.*

**88. Effect of remission of sentence on grade.**—An order remitting the unexecuted portion of the sentence of a lieutenant-commander of the U. S. Navy who had been suspended for two years, and was to retain his number and grade, does not have the effect of advancing him two numbers in grade, although during the time of his suspension from duty two officers with commissions dated subsequently to his had been advanced above him in the grade of lieutenant-commander. 20 Op. 243.

**89. Officers of the line.**—Neither boatswains, gunners, nor warrant machinists are officers of the line of the Navy within the meaning of the Revised Statutes and the acts of August 5, 1882 (22 Stat. 284), and March 3, 1899 (30 Stat. 1004). 22 Op. 620.

**90. Same.**—Boatswains and gunners are officers in the line of command, and there is nothing in the classification in the act of 1862 (12 Stat. 583), to indicate an intent to make unlawful the exercise of command by them. *Ib.*

**91. Same.**—These officers are not improperly classed in the Regulations of the Navy as officers of the line, and may therefore be given the star upon their uniforms. *Ib.*

**92. Same.**—Warrant machinists created by the naval personnel act were not placed in the list of line officers of the Navy, and are not entitled to command. *Ib.*

## 3. Titles.

**93. The titles of the heads of the existing staff bureaus of the Navy** are positively fixed by law (Rev. Stat. sec. 1471) and are unchanged by the later legislation (Navy personnel act of 1899, 30 Stat. 1004) which confers the advanced rank and pay upon all bureau chiefs below the rank of rear-admiral. 25 Op. 122.

**94. Same.**—Under those laws, construed in connection with the statutes relating to retirement and with past usage in the service, the designated titles of staff bureau chiefs carry over from the active to the retired list. *Ib.*

**95. Same.**—Respecting bureaus which, though aiding in central administration, are not technically of the staff; and line or staff officers serving as chiefs of those bureaus or retired as such; and line or staff officers in

the grade or having the rank of captain and entitled to be retired (sec. 11, personnel act) "in the next higher grade," i. e., as rear-admiral; and the special cases of the Judge-Advocate-General and the Secretary to the Admiral—in all these cases the law lays down no explicit rule relative to titles, and hence in those situations and aspects the subject may be and should be disposed of by Executive order or navy regulation or usage. *Ib.*

96. **Titles of retired staff bureau chiefs.**—The evident meaning of the opinion of March 4, 1904 (25 Op. 122), is that the legal title of the head of a staff bureau is carried on into his retirement when that step occurs or the right to be retired accrues, while he is at the head of the staff bureau. 25 Op. 294.

97. **Same.**—When the retirement of an officer occurs during service as the head of one of the staff bureaus, the retired officer is entitled under the law to be borne upon the Navy Register as a retired officer under that title permanently. *Ib.*

98. **Same.**—A pay director of the Navy who by appointment has become a Paymaster-General, and who while holding that office reaches the retiring age, has the right to bear the title of Paymaster-General not only after he has reached the retiring age but is still performing the duties of that office, and not only after he is actually retired and detached from the office and before his term of appointment as Paymaster-General has expired, but also after the latter date, and permanently, upon the retired list. *Ib.*

#### 4. Precedence.

99. **Engineer Officers.**—There is no inconsistency between sections 1483 and 1484, Revised Statutes, in their operation upon the question of the precedence of engineer officers of the Navy. 21 Op. 46.

100. **Same.**—The rule of the Febiger Board for ascertaining the date of precedence of officers on the active list of the Navy is in conflict with the act approved August 5, 1882 (22 Stat. 284). *Ib.*

101. **Same.**—Status of members of the staff corps is governed by sections 1485, 1486, and 1487, Revised Statutes. *Ib.*

#### 5. Pay.

102. **Longevity pay, actual time of service.**—In computing the longevity pay of officers of

the Army, under the provision in the act of February 24, 1881 (21 Stat. 346), declaring that "the actual time of service in the Army or Navy, or both, shall be allowed all officers," etc.: *Held* that where an officer served in the Medical Corps of the Navy the actual time of his service in that corps should be allowed; that where an officer served as a captain's clerk in the Navy, the actual time of his service as such clerk should be allowed; but that where the officer served as an assistant civil engineer in the employ of the War Department on the Florida coast and elsewhere, the actual time of his service in that capacity should not be allowed. 17 Op. 93. (*But see United States v. Morton*, 112 U. S. 1.)

103. **Pay commences at date of appointment.**—The increased pay of a naval officer, promoted from one grade to another to take rank at a date prior to the confirmation of his appointment, commences, not at the date from which he took rank, but at the date of his appointment. 17 Op. 319.

104. **No increase of pay for services prior to act of 1883.**—The provisions of the Navy appropriation acts of August 5, 1882 (22 Stat. 287), and March 3, 1883 (22 Stat. 473), requiring all officers of the Navy to be credited with the actual time they may have served as officers or enlisted men in the regular or volunteer Navy, etc., do not entitle such officers to any increased pay for services rendered by them prior to March 3, 1883. 17 Op. 555.

105. **An officer retired on furlough pay under section 1454, Revised Statutes, can not be transferred on the retired pay list under section 1594, Revised Statutes, with increase of pay;** such increase being forbidden by the act of August 5, 1882 (22 Stat. 286). 18 Op. 96.

106. **Nor can an officer be simultaneously retired on furlough pay, and transferred to the retired pay list, so as to give him the pay of the latter.** *Ib.*

107. **Paymaster of the fleet.**—No designation other than that made by the President entitles a naval paymaster to the place and perquisites of paymaster of the fleet. 18 Op. 156.

PAY OF MARINE CORPS. *See* NAVY, III, d, 145, 149.

e. *Arrest.*

108. As adequate power is possessed by the Secretary of the Navy to cause the arrest of an officer for **malappropriation of public funds**, notwithstanding the fact that he has been arrested by the civil authorities for the same offense and discharged on bail, it is improper to cause his arrest by the civil officers in order that he may be brought to trial before a naval court-martial. 21 Op. 504.

f. *Reprimand.*

109. **Private reprimand no bar to court-martial.**—A private reprimand, administered by the commander in chief of a fleet to a naval officer in accordance with the recommendation of a court of inquiry, as a punishment for an offense, such as neglect of duty, is no bar to a subsequent trial of such officer by general court-martial for the same offense. 25 Op. 623.

110. **Same.**—The proceedings of a board of inquest or of a court of inquiry are in no sense a trial of an issue or of an accused person. These boards perform no real judicial function, and are convened only for the purpose of informing the Department in a preliminary way as to the facts involved in the inquiry. *Ib.*

111. **Same.**—The jeopardy of the law means real peril, originally of life or limb, and always of substantial punishment or penalty. There must be a trial upon an indictment for an offense, or upon some equivalent charge and presentment, as by court-martial, submitting a definite issue and involving conviction or acquittal. *Ib.*

III. **Marine Corps.**a. *In general.*

112. **Certificate of merit.**—Section 1216, Revised Statutes, as amended (act of March 29, 1892; 27 Stat. 12), which empowers the President to grant a certificate of merit to an enlisted man of the Army who has distinguished himself in the service and has been recommended therefor by the commanding officer of the regiment or the chief of the corps to which such man belongs, **applies only to enlisted men of the Army, and not to members of**

**the U. S. Marine Corps** who have been similarly commended. 24 Op. 579.

113. **Detail.**—The Secretary of the Navy may detail men from the Marine Corps to guard property of the Government placed on exhibition at the **World's Columbian Exposition**. 20 Op. 576, 577.

114. **Same.**—The actual subsistence of enlisted men of the Navy employed in taking care of the wares and other Government property placed on exhibition at the **World's Columbian Exposition** may be paid from the fund provided for the Marine Corps and its subsistence. *Ib.*

115. **Deposit of savings.**—The act of February 9, 1889 (25 Stat. 657), "to provide for the deposit of the savings of seamen of the United States Navy," does not extend to enlisted men of the Marine Corps. 19 Op. 616.

116. **Retention of part of pay.**—The provisions of section 1 of the act of June 16, 1890 (26 Stat. 157), directing the retention of \$4 monthly from the pay of each enlisted man of the Army to be paid upon discharge, the same being subject to forfeiture for desertion, are applicable to enlisted men of the **Marine Corps** by force and effect of section 1612, Revised Statutes; but sections 2, 3, and 4 of that act were not intended to include the Marine Corps. *Ib.*

117. **Deposit of savings with paymaster of corps.**—Sections 1305–1308, Revised Statutes, which provide for the deposit with any army paymaster by any enlisted man of the Army of his savings, have no application to the **Marine Corps**, and the enlisted men of that corps have not the right or privilege of making such deposits with a paymaster of that branch of the service. 25 Op. 190.

APPROPRIATIONS. See NAVY, 149.

b. *Appointment, Promotion, Examination.*

118. **Appointment.**—The exemption as to age limit with reference to the eligibility to appointment in the **Marine Corps** is not restricted to those who served in such corps, but extends to all graduates of the **Naval Academy** who served in the war with Spain. 22 Op. 485.

119. **Promotions—Time of service.**—In making the promotions provided for by the act of March 3, 1899 (30 Stat. 1004, 1009), in the Marine Corps, an applicant is entitled to have

his time at the Naval Academy and at sea anterior to commission counted as time of service. 22 Op. 377.

**120. Promotion—Physical examination.**—There is no law requiring an officer of the Marine Corps, before promotion, to be examined as to his physical qualification for duty at sea. 17 Op. 117.

**121. Same.**—A board of naval surgeons, constituted under section 1493, Revised Statutes, is not by law invested with authority to examine and pronounce upon any other cases than those of officers on the active list of the Navy. *Ib.*

**122. Same.**—*Semble* that the examination, physical or other, of a retiring board, constituted under section 1623, Revised Statutes, is the only one to which an officer of the Marine Corps is by law subjected in order to determine his fitness for active duty; and unless the officer is by *this* board found incapacitated for active service, and the finding is approved by the President, he remains in the line of promotion on the active list as he previously was, and is entitled to all the rights which belong to his position. *Ib.*

**123. Promotions—Accrued rights—Examination.**—Certain promotions in the Marine Corps, the rights to which had been earned and which vacancy occurred eighteen days previous to the act of July 28, 1892 (27 Stat. 321), providing for the examination of commissioned officers of the Marine Corps and regulating promotions therein, may lawfully be made without examination. 20 Op. 433.

**124. Same.**—The right to promotion, inhering in one who is a commissioned officer, is, under existing legislation, in the nature of a vested right, subject, nevertheless, to being defeated in accordance with the provisions of the laws. *Ib.*

**125. Examinations of officers for promotion.**—Examinations for promotion of officers in the Marine Corps should be held anterior to the date upon which a vacancy is expected to occur. 25 Op. 568.

**126. Same.**—Where an officer entitled to promotion upon examination is required to be absent from any place where an examining board can be convened, as provided by section 32 of the act of February 2, 1901 (31 Stat. L. 756), the President may promote the officer subject to future examination. *Ib.*

**127. Same.**—Should such officer upon examination be found disqualified, he should be treated in the same manner as if he had been examined prior to promotion. *Ib.*

**128. Same.**—An officer who fails to pass his examination should be suspended from promotion for one year from the date of the approval of the proceedings of the examining board by the Secretary of the Navy, during which period he is ineligible for reexamination. *Ib.*

**129. Same.**—If, however, a vacancy occurs during such period of suspension for which, owing to death, resignation, or other cause, there should be no senior officer eligible, then the suspended officer must, of necessity, take the vacancy. *Ib.*

**130. Same.**—The Secretary of the Navy may make the date of such suspension coincident with the date of the vacancy, by delaying the approval until the vacancy occurs. *Ib.*

**131. Same.**—Where an examination is held before the vacancy occurs, and the officer fails in such examination for other than physical cause, he can not be reexamined until one year from the date of the approval of the proceedings of the examining board. *Ib.*

**132. Same.**—Should the examination be held after the date of the vacancy, and the officer fail in such examination, he should be suspended from promotion for one year from the date of the vacancy to which he was promoted by the President subject to examination. *Ib.*

**133. Same.**—The period of "loss of date" is not necessarily contemporaneous with the period of suspension, but it should correspond in length of time with the period of suspension. *Ib.*

**134. Same.**—While the period of suspension from promotion begins to run from the date of the approval of the examining board, the period of "loss of date" begins to run from the date of the vacancy to which the suspended officer would have been promoted had he passed his examination. *Ib.*

**135. Same.**—Several questions concerning suspensions from promotion, appointment, and rank of certain designated officers of the Marine Corps, involving a complicated chain of circumstances, considered in the light of the above rulings and decided. *Ib.*

c. *Retirement.*

**136. Retirement of officers of the Marine Corps.**—In the matter of retirement, officers of the Marine Corps with creditable records who served during the civil war, are governed entirely by the act of April 27, 1904 (33 Stat. 324, 349), which provides that they shall be retired "in like manner and under the same conditions as provided for officers of the Navy who served during the civil war." To this extent, that act alters and amends section 1622, Revised Statutes. 25 Op. 262.

**137. Same.**—The retirement provision of the act of April 23, 1904 (33 Stat. 259, 264), has no application, by virtue of section 1622, Revised Statutes, to officers of the Marine Corps who served with credit during the civil war. *Ib.*

DISCHARGE OF ENLISTED MEN. See NAVY, I, c.

d. *Rank and Pay.*

**138. Relative rank.**—The mere promotion of two officers in different departments of the Marine Corps does not, under sections 1603 and 1219, Revised Statutes, disturb their pre-existing relative rank. 24 Op. 74.

**139. Same.**—Section 1219, Revised Statutes, does not purport to regulate merely the relative rank of officers in the same department of the Army, but is intended to fix the relative rank of the various officers of different departments of the Army. *Ib.*

**140. Same.**—There is no warrant, therefore, for holding that promotions are appointments where the officers promoted are in different departments of the Marine Corps, but are not appointments where they are in the same department. *Ib.*

**141. Relative rank and precedence of officers of the Marine Corps and officers of the line of the Navy.**—There is no express provision of law which fixes the relative rank and precedence of officers of the Marine Corps and officers of the line of the Navy. 25 Op. 517.

**142. Same—Army and Navy officers.**—By an unwritten law of the Army and Navy, officers of the Army and officers of the Navy take relative rank, as respects the two classes, according to their respective grades; and if of similar grade then according to dates of commission. *Ib.*

**143. Same.**—Officers of the Marine Corps, who are "in relation to rank on the same

footing as officers of similar grades in the Army," take rank and precedence relatively to line officers in the Navy according to grade; and if of similar grade, then according to dates of commission. *Ib.*

**144. Same.**—There is no law making any distinction as to relative rank and precedence between the officers of the Marine Corps who are, and those who are not, graduates of the United States Naval Academy, either as respects themselves or officers of the line of the Navy. *Ib.*

**145. Rank and pay of retired officers of Marine Corps.**—Section 11 of the act of March 3, 1899 (30 Stat. 1007), which fixes the rank and pay of retired officers of the Navy, does not apply to officers of the Marine Corps. 24 Op. 709.

**146. Pay of retired commodore promoted to grade of rear-admiral.**—An officer who was retired as a commodore, and has since been promoted to the grade of rear-admiral on the retired list, under the act of August 15, 1876 (19 Stat. 204), amendatory of section 1460, Revised Statutes, is not entitled to any increase of pay by reason of his promotion. 17 Op. 495.

**147. Same—Active service only.**—The first section of the act of June 22, 1874 (18 Stat. 191), is *in pari materia* with the provision touching the pay of promoted officers contained in section 7 of the act of July 15, 1870 (16 Stat. 333), the act of June 5, 1872 (17 Stat. 226), and section 1516, Revised Statutes, and was designed to fix the commencement of the increased pay of promoted officers in active service only. *Ib.*

**148. Same.**—Section 1591, Revised Statutes, which declares that an officer promoted on the retired list shall not, in consequence of such promotion, be entitled to increase of pay, is applicable alike to officers promoted under section 1461, Revised Statutes, and to those promoted under section 1460, as amended. *Ib.*

**149. Appropriations—Pay.**—Unexpended balances of moneys appropriated for the pay of the Navy and Marine Corps for the fiscal year ending June 30, 1884, are not available for payment of the Navy and Marine Corps for services rendered during the fiscal year ending June 30, 1885. 18 Op. 412.



e. *Transportation and Subsistence.*

150. The cost of transportation and sustenance of men detailed from the Marine Corps to guard and protect property of the Government placed on exhibition at the World's Columbian Exposition must be paid from the fund provided for the Marine Corps and its subsistence, and is only limited by the consideration of the question whether there are sufficient funds available for that purpose, as to which the Secretary of the Navy is the sole judge. 20 Op. 576, 577.

151. *Transportation accounts.*—The methods adopted in the settlement of accounts for the transportation of the Army under the act of (20 Stat. 420) are not applicable to accounts for the transportation of enlisted men of the Navy and Marine Corps. 21 Op. 297.

IV. *Engineers and Engineer Corps.*

152. *Chief engineers grade.*—There is but one grade of chief engineers in the Navy, and the division of the seventy chief engineers into "three grades" by relative rank, as provided for in sections 1390 and 1476, Revised Statutes, creates merely three classes of chief engineers of the same grade. 20 Op. 358.

153. *Same.*—The relative rank among the chief engineers changes with their seniority in that grade. Such change may be indicated by a notification from the Secretary of the Navy, and does not require examination, new appointment, or confirmation by the Senate. *Ib.*

154. *Same.*—Promotion to the grade of assistant engineer from that of first assistant engineer requires examination under sections 1493 and 1496, Revised Statutes. *Ib.*

155. *Engineer officers who attained the relative rank of commander prior to the passage of the personnel act of March 2, 1899* (30 Stat. 1004), became entitled under section 2 of that act to take the actual rank in the line of the Navy. 22 Op. 449.

156. *Civil engineers in the naval service are officers in the Navy, possessing defined relative rank with other naval officers.* 17 Op. 126.

157. *Same.*—They may be retired from active service and placed on the retired list under the statutory provisions regulating the

retirement of officers in the Navy (see secs. 1443 *et seq.*, Rev. Stat.) *Ib.*

158. *Engineer Corps.*—Vacancies in the Engineer Corps can not be filled by graduates of the Line and Marine Corps division at Annapolis, or *vice versa.* 20 Op. 615.

159. *Same.*—No appointments can be made under the act of March 2, 1889 (25 Stat. 878), either to the Line or Marine Corps, or to the Engineer Corps, except from graduates of the cadet division whose studies are directed to such appointments respectively. *Ib.*

160. *Same.*—In case of more vacancies than can be filled in this manner, no appointment can be made during the year in which the deficiency occurs. The act of March 2, 1889 (25 Stat. 878), authorizes appointments from final graduates only. *Ib.*

161. *Cadet Engineers—Pay.*—A cadet engineer, who completed the prescribed course of instruction at the Naval Academy and at sea June 10, 1881, and successfully passed an examination, and was confirmed by the Senate as an assistant engineer December 20, 1881, to take rank from the former date, is entitled to the pay of assistant engineer from the date he took rank as such, if that date is subsequent to the vacancy he was appointed to fill. 17 Op. 329.

162. *Same.*—Section 1 of the act of June 22, 1874 (18 Stat. 191), comprehends cadet engineers, and fixes the commencement of their pay in the grade of assistant engineer when promoted thereto. *Ib.*

163. *Same.*—Cadet engineers are "officers" within the meaning of section 1558, Revised Statutes, also within the meaning of section 1557, which regulates the pay of "officers on furlough." They are furthermore "officers of a class subject to examination before promotion" within the meaning of section 1562. 17 Op. 332.

164. The cadet engineers in the Navy (graduates of the classes of 1881 and 1882) who were discharged under a misconception of the act of August 5, 1882 (22 Stat. 285), not having been legally removed, are still the lawful incumbents of their respective offices, and should be recognized as in the immediate line of promotion, in their proper order, to fill the vacancies that may occur in the office of assistant engineers. 18 Op. 373.

165. *Cadet engineers—Illegally deposed—Appointment to another office—Reinstatement.*

ment.—The appointment of a former cadet engineer of the Navy, who had been illegally deposed from that position, to the office of second assistant engineer in the Revenue-Marine Service, does not operate to prevent his reinstatement as cadet engineer in the Navy. 18 Op. 395.

166. *Same.*—Such acceptance is no more inconsistent with an intention on his part to resume the exercise of the office of cadet engineer as soon as he might be recognized as such, than would the acceptance of any other employment from which he might derive support. *Ib.*

167. *Same.*—Even if the acceptance of the second office be viewed as a resignation, he is nevertheless an incumbent of the office of cadet engineer, for the reason that his resignation has not been accepted, and, as the two offices are incompatible, he has never been *de jure* a second assistant engineer in the Revenue Marine Service. *Ib.*

168. *Same.*—The action of the Secretary of the Navy in ordering two cadet engineers to be dropped from the Navy rolls because they failed to pass the final examinations as naval cadets, when they had already completed the four years' course as cadet engineers, had passed their examinations as such, had received the usual certificate of graduation and been appointed cadet engineers, was void, and they are still in the service, and entitled to reinstatement with their classmates upon the roll of the Navy. *Ib.*

169. *Same.*—The theory under which the Secretary of the Navy acted, that they were transmuted by the act of August 5, 1882 (22 Stat. 284), into naval cadets, and consequently liable to examination and dismissal for failure to pass as such, was fallacious. (*U. S. v. Redgrave*, 116 U. S. 474.) *Ib.*

CADETS. See also NAVAL ACADEMY.

#### V. Naval Court-Martial.

170. Arrest—Copy of charges.—Upon consideration of articles 24, 43, and 44 for the government of the Navy (sec. 1624, R. S.): Held that there may be two arrests, namely: First, an arrest in an emergency, or upon discovery of the alleged wrongdoing, with a view to a preliminary examination, and, if necessary, the formulation and specification

of charges; and, secondly, under Article 44, an arrest for trial. 19 Op. 472.

171. *Same.*—Article 43 in declaring that "the person accused shall be furnished with a true copy of the charges, with the specifications, at the time he is put under arrest," has reference to the second and formal arrest for trial, and not to the apprehension or arrest as preliminary to an investigation. *Ib.*

172. Witnesses—No power to compel civilians to testify.—A naval court-martial, or judge-advocate thereof, has no power to compel a civilian who is not subject to the articles for the government of the Navy to appear and testify before such court. A court-martial is a court of limited and special jurisdiction, and has only such powers as are clearly conferred by statute. 19 Op. 501.

173. *Same.*—Neither article 42 nor article 57 in section 1624, Revised Statutes, gives the power to compel the attendance of civilian witnesses. *Ib.*

174. *Same.*—The provisions of section 1202, Revised Statutes, taken from section 25 of the act of March 3, 1863 (12 Stat. 754), apply only to military (*i. e.* Army) courts. *Ib.*

175. Special counsel may be employed by the Attorney-General, at the request of the Secretary of the Navy, to assist the judge-advocate in a trial by court-martial; the compensation of such counsel (in the absence of other provision) to be paid from the appropriation for the contingent expenses of the Navy. 18 Op. 135.

176. *Same.*—Such counsel should be commissioned by the Attorney-General under section 366, Revised Statutes. *Ib.*

177. The conviction by a general court-martial properly called can not be ratified or confirmed by the Secretary of the Navy where one member of the court has been relieved by a subordinate without authority of the Secretary and another judge substituted in his stead. 22 Op. 137.

178. *Same.*—The consent of the accused can not confer jurisdiction upon a court not possessing it by virtue of statutory authority. *Ib.*

179. *Same.*—Trial by a court not legally constituted is not a trial which can be said to be "due process of law." *Ib.*

180. Sentence—Effect of remission on grade.—An order remitting the unexecuted portion of the sentence of a lieutenant-com-

mander of the United States Navy who had been suspended for two years, and was to retain his number and grade, does not have the effect of advancing him two numbers in grade, although during the time of his suspension from duty two officers with commissions dated subsequently to his had been advanced above him in the grade of lieutenant-commander. 20 Op. 243.

**181. Attestation of sentence.**—The death of one of the members of a general court-martial after sentence had been imposed, but before he had appended his signature to the sentence, as required by article 52 of the articles for the government of the Navy (sec. 1624, Rev. Stat.), does not render the sentence void. It is sufficiently authenticated if attested by the other members of the court. 23 Op. 550.

**182. Restoration—Pardon.**—C., a lieutenant-commander in the Navy, was sentenced by a court-martial to suspension for one year, and to retain his then present number on the list of lieutenant-commanders for that time. The sentence having been executed, he applied to be restored to the number on said list which he thereby lost: *Held* that the restoration could not be effected by the President otherwise than by a pardon. 17 Op. 31.

**183. Same.**—The punishment imposed (loss of numbers), being a continuing one, is still subject to the pardoning power, which, when exercised, would have the effect to restore the officer to his former rank according to the date of his commission. *Ib.*

**184. The Chief of the Bureau of Medicine and Surgery** in the Navy Department is amenable to the jurisdiction of a naval court-martial upon charges and specifications preferred against him for acts done as such chief. 18 Op. 176.

#### VI. Navy Regulations.

**185.** The orders, regulations, and instructions issued by the Secretary of the Navy, with the approval of the President, for the government of the Navy have the force of the statute law when not inconsistent therewith. 21 Op. 46.

**186. Article 21 of the Navy Regulations of 1893** is within the authority conferred upon the Secretary of the Navy by section 1547, Revised Statutes. *Ib.*

**187. Bounty—Refund of.**—The regulations issued by the Secretary of the Navy issued July 1, 1901, pursuant to the act of March 1, 1889 (25 Stat. 781), which act provides a bounty to each person enlisting as an apprentice in the United States Navy, are inconsistent with law and void in so far as they require a refund of the bounty, or any portion of it, in case an apprentice is discharged within a year after his enlistment for disability not incurred in the line of duty. 25 Op. 271.

**188. Same.**—Under section 1547, Revised Statutes, all navy regulations issued since July 14, 1862, require the approval of the President. *Ib.*

#### VII.—Vessels—Contracts for construction, etc.

**189. Proposals—Work on Navy vessels—Surety.**—The Secretary of the Navy may, in his discretion, under section 7 of the act of August 3, 1886 (24 Stat. 215), authorizing proposals for certain work on Navy vessels, which shall be subject to "such provisions as to bonds and security for the quality and due completion of the work as the Secretary of the Navy shall prescribe," accept as surety (instead of an individual) a body corporate empowered to assume that relation. 19 Op. 57.

**190. Modification of contracts—Reserve—Payment.**—The Secretary of the Navy has power, in order to prevent delay in the construction of certain new cruisers, to modify the contract as regards the construction of the shafts, and may also make the per centum reserved upon each installment available to the contractor before the time originally stipulated; but payment in full for the vessels, in advance of their completion, would be a violation of section 3648, Revised Statutes. 18 Op. 101.

**191. Payment of the tenth installment, but not the final payment,** on a vessel under construction for the Government, may properly be made to the contractor in advance of the time stipulated in the contract, where the money has been earned, but the full trial trip and formal acceptance have been delayed. 18 Op. 105.

**192. Same.**—Section 3648, Revised Statutes, does not preclude a payment in any case

where the money has been actually earned and the Government has received an equivalent therefor. *Ib.*

193. **Transfer of contract.**—A manufacturing company, after having entered into a contract with the Navy Department to deliver a large quantity of steel castings to be used in the construction of an armored cruiser, proposed to transfer the contract to another manufacturing company, which contemplated fulfilling the covenants of the former company with the Government, and asked the approval of such transfer by the Secretary of the Navy: *Advised* that, in view of the prohibition in section 3737, Revised Statutes, the proposed transfer can not lawfully be approved and recognized by the Navy Department. 19 Op. 186.

194. Where a covenant in a contract for the construction of a dispatch boat, the "Dolphin," provided that the vessel should be constructed in accordance with the provisions of certain acts of Congress, one of which stipulated that it should be constructed in conformity with the recommendations of the naval advisory board, which board recommended that the vessel should "have a sea speed of 15 knots:" *Held* that the covenant bound the contractor as effectually to make a vessel of that speed as though it had been agreed to in express words. 18 Op. 207.

195. **Same.**—The provision in the contract that if upon the trial trip the engines should not develop the full power called for by the contract and the failure should not be due to "defective workmanship or materials," the ship should be accepted by the Government nevertheless, is without effect as modifying the speed requirement. *Ib.*

196. **Same.**—The provisions of the contract binding the United States to accept the vessel on the approval of the Naval Advisory Board are void and inoperative as shifting that responsibility from the Secretary of the Treasury to the board, in violation of the act under which the contract was made. *Ib.*

197. **Same.**—The obvious intent of the provision for the acceptance of the vessel in case of its failure to maintain on trial the required power being to relieve the contractor of all duty and responsibility as to the power and speed of the ship: *Held* that no contract exists between Mr. Roach and the United States; that the money paid him was without authority of law, and may be recovered; and

that the money so paid having gone into the ship, a court of equity will follow it there and for that purpose will entertain a proceeding against the ship itself. *Ib.*

198. **Same.**—The objection that the vessel is wanting in the necessary strength and stiffness is also a fatal defect, as the contract provides that the vessel "shall be sufficiently strong to carry the armament, equipment, coal, stores, and machinery prescribed by the naval advisory board and indicated in the annexed drawings and specifications. *Ib.*

199. **Same.**—The Government stands unaffected by acts of acquiescence, approval, or acceptance by the advisory board or others, the statute providing that "no such vessel shall be accepted unless completed in strict conformity with the contract, with the advice and assistance of the naval advisory board." *Ib.*

Reaffirmed, 18 Op. 240.

200. **Penalties for failure to complete.**—The Secretary of the Navy had the power under the contract of February 11, 1887, with the Pneumatic Dynamite Gun Company for the construction of the U. S. S. *Vesuvius*, to impose the penalties provided for in the sixth clause of that contract for failing to complete the vessel within the time specified. 20 Op. 631.

201. **Same—Remission.**—The present Secretary of the Navy has no authority to remit those penalties and pay the amount thereof to the claimants. *Ib.*

202. **Allowance for change of plans.**—The Secretary of the Navy is authorized to embody in the contracts for building battle ships Nos. 26 and 27 a provision to the effect that the contract time for the completion of the vessels shall cover changes ordered by the Government, not exceeding an increased cost of 5 per cent of the contract price; and that should the increased cost occasioned by such changes exceed 5 per cent of the contract price, the Secretary may allow the contractors such reasonable sums for each ship delayed beyond the time of completion as shall be caused by such additional changes, the allowances in no case to exceed the amount of the penalties for delay due to the contractor as prescribed by the contract. 25 Op. 588.

203. **Same.**—The explicit recognition in the act of March 3, 1893 (27 Stat. 731) of similar authority in regard to former speed premiums and penalties affected by speed, is

not to be regarded as applicable to those particular contracts alone, but is the recognition of an authority inherent in the Secretary's discretion respecting all naval constructions. *Ib.*

**204. Change of construction and material from that directed by the statute.**—The act of March 3, 1893 (27 Stat. 731), contemplates construction of light draft protected gunboats of steel, and does not authorize the building of such gunboats on the "composite plan," a vessel of which some other material than steel forms a substantial integral part. 20 Op. 617.

**205. Same.**—If it be the fact that in naval architecture the term "steel," as descriptive of a vessel, has a special meaning, and includes a vessel built on the composite plan, as well as a steel vessel proper, an opposite conclusion might be reached. *Ib.*

**206. Plans and specifications where not specifically authorized by the statute.**—Where a statute authorizes the building of vessels by the Navy Department, but makes no provision for procuring the necessary plans and specifications therefor, it is to be construed as impliedly authorizing the head of the Department to procure such plans and specifications in the mode and manner which he shall deem best. 18 Op. 244.

**207. Materials and labor.**—The act of August 13, 1894 (28 Stat. 278), entitled "An act for the protection of persons furnishing materials and labor for the construction of public works," relates to contracts for the construction of public buildings, fortifications, river and harbor improvements, etc., which can only be erected upon land, and are commonly understood under the designation "public works." The act does not refer to contracts for the construction of naval vessels. 23 Op. 174.

**208. Appropriation for construction and completion.**—The words "exclusive of armament," as used in the first section of the act of August 3, 1886 (24 Stat. 215), with reference to armored vessels, are not to be understood as excluding the offensive armament, such as guns, torpedoes, etc., *only*; the term "armament" comprehending, besides those articles, such shields and protections as are directly and necessarily connected with the efficient and safe working thereof. 19 Op. 235.

**209. The unexpended balances of the appropriations made by the act of March 3, 1883**

(22 Stat. 476, 477), under the headings "Bureau of Construction and Repair," and "Bureau of Steam Engineering," may be used in completing the hulls and machinery of the cruisers *Chicago*, *Boston*, and *Atlanta*, provided the total expenditure shall not exceed the total estimated cost thereof, as reported by the naval advisory board. 18 Op. 566.

**210. Same.**—The balance of an appropriation made for a specific purpose may be used for that purpose in the discharge of obligations imposed by a lawful continuous contract. *Ib.*

**211. Speed premiums.**—The appropriation for special speed premiums made by the act of July 26, 1894, is not limited in its application to premiums earned prior to January 1, 1894. 21 Op. 84.

**212. Release of mortgage given by Robert L. Stevens.**—It is competent for the Secretary of the Navy to release a mortgage given by Robert L. Stevens on the 9th of September, 1848, as security for the performance of a contract theretofore entered into by him for the construction of a war vessel since known as the "*Stevens Battery*," all interest of the United States in the construction of said vessel having been relinquished by the resolutions of July 17, 1862 (12 Stat. 628), and July 1, 1870 (16 Stat. 383). 17 Op. 281.

**213. Release of cruiser *Galveston* from possession of State court.**—The Attorney-General defers answering the question as to the right of the Secretary of the Navy, under the direction of the President, to employ the military forces of the Government to obtain possession of the cruiser *Galveston*, in course of construction under contract with the Wm. R. Trigg Company, of Richmond, Va., which company has gone into the hands of a receiver appointed by the chancery court of Virginia, for the reason that a method of procedure in such cases is provided for by section 3753, Revised Statutes, and occasion for the exercise of this power is not likely to arise if the stipulation authorized by that section is filed. 24 Op. 679.

**214. Same.**—No instrumentality of the Federal Government may be taken into custody and held under any adverse authority whatever. This applies as well to an instrumentality in process of creation as to one already completed. *Ib.*

215. *Same.*—The United States is entitled to the undisputed possession and control of its property and of property in which it is interested to the extent of that interest, and this possession and control are exempt from the process of every court. *Ib.*

216. *Same.*—The word "stipulation," as used in section 3753, Revised Statutes, denotes an undertaking in the nature of bail, and is analogous to the "stipulation for value" under present admiralty practice, the measure of the Government's obligation being limited in section 3754, Revised Statutes, to "the value of the interest of the United States in the property in question." *Ib.*

APPROPRIATIONS. *See* APPROPRIATIONS; AND NAVY, 208-211.

CADETS. *See* NAVAL ACADEMY; AND NAVY, 160-168.

MARINE-HOSPITAL SERVICE. *See* MARINE-HOSPITAL SERVICE.

SUPPLIES. *See* NAVY, I, f.

SECRETARY TO THE ADMIRAL. *See* NAVY. 25. 95.

## NAVY DEPARTMENT.

### I. In General, 1-7.

### II. Officers.

a. *Secretary of the Navy*, 8-22.

b. *Commissioner of Navigation*, 23-24.

### III. Bureaus, 25-31.

### IV. Clerical Force, 32-34.

#### I. In General.

1. *Reimbursement of Navy Department from appropriation for Revenue-Marine Service for ordnance furnished.*—No legal obstacle exists against reimbursing the appropriation for the Navy Department from the appropriation for the Revenue-Marine Service with the cost of such heavy ordnance and ordnance stores as may be furnished by that Department to be used in said service. 17 Op. 480.

2. *Same.*—Where one Department receives from another Department supplies which are within the scope of appropriations belonging to

each, a reimbursement of the appropriation of the one from the appropriation of the other, of the cost of such supplies, is not a violation of section 3678, Revised Statutes; nor do the provisions of 3618, Revised Statutes, apply to such case. *Ib.*

3. *Payment of money due contractor.*—The Navy Department is not affected by an injunction issued by a State directing a contractor to pay to a receiver all moneys received by him in his contract with the United States Government, for the reason that the order is merely interlocutory, to which the United States was not a party, and in which the court does not attempt to interfere with the operation of that Department. 20 Op. 643.

4. *Same.*—The moneys due such contractor may be paid to him through his attorney in fact, constituted for that purpose. *Ib.*

5. *Claim—Armor-plate royalty—Harvey process.*—The Navy Department may rightfully withhold its approval of the voucher providing for the payment to the Carnegie Steel Company of the sum of \$8,024.45, claimed as royalty for the use of the Harvey process in the manufacture of armor plate for naval vessels under the contract of 1898, until the right of the Harvey Steel Company to demand and collect from the Government a royalty for the use of the process is determined in the suit pending in the Court of Claims. 23 Op. 422.

Reconsidered and reaffirmed. 23 Op. 495.

6. *Same.*—The claim of the Bethlehem Steel Company for reimbursement for royalty paid, being based upon a contract similar to that of the Carnegie company, the Secretary should likewise withhold his approval of the claim of the Bethlehem company. 23 Op. 495.

7. *Culebra Islands—Assignment as naval base.*—The Navy Department would not be warranted in requesting the President to make assignment to it of the Culebra group of islands for a naval base, so far, at least, as that portion of the plan is concerned which involves harbor shores, or any other branch of the rights and property committed by section 13 of the act of April 12, 1900 (31 Stat. 77), to the administration of the government of Porto Rico. 23 Op. 564.

## II. Officers.

### a. *Secretary of the Treasury.*

**8. Bounty.**—In determining questions with reference to bounty arising under section 4635, Revised Statutes, the Secretary of the Navy is authorized: (1) To institute proceedings under a libel of information in a district court of the United States (or the Supreme Court of the District of Columbia), sitting as a prize court; (2) to submit the case to the Court of Claims; (3) or to determine himself the question arising and award the bounty, the better view being that the questions of fact involved should be adjudicated by the proper court. 22 Op. 205.

**9. Same.**—Proceedings for adjudication of bounty for the capture or destruction of a vessel may be begun at the instance of the Secretary of the Navy in any district that he may designate, and upon his failure to designate a district within three months after the vessel has been captured or destroyed, the claimants may institute proceedings. *Ib.*

**10. Court-martial—Substitution of a judge.**—The Secretary of the Navy is without authority to ratify and confirm, after trial and conviction, the act of a subordinate in relieving one judge of a court-martial before trial, by substituting another in his stead. 22 Op. 137.

**11. Reexamination of retired officer by medical board.**—The Secretary of the Navy, in 1878, was not authorized by law to submit the case of Surgeon Thomley, who was retired under section 3 of the act of February 21, 1861 (12 Stat. 150), to a medical board for reexamination as to the origin of the disability for which he was retired, and his decision, based upon the report of that board, is without legal effect as regards the cause for the retirement of that officer or his right to pay. 17 Op. 178.

**12. Determination of the relative rank of naval officers.**—The Secretary of the Navy, by virtue of his general power under the President to make rules and regulations for the government of the Navy, may determine, with the force and effect of law, the relative rank of naval officers. Usually this is better done by general rules than by decisions in particular cases, but it may be done either way. 23 Op. 156.

**13. Naval cadet nominated by Congressman who was unseated.**—The Secretary of the Navy is not authorized to revoke the nomination of a cadet to the Naval Academy, made upon the recommendation of a Member of the House of Representatives who, was afterwards unseated by contest of election, and notify the newly seated Member that a vacancy occurs. He has no right to call for a new recommendation, except under section 1516, Revised Statutes, when the candidate fails to pass his examination. 21 Op. 342.

**14. Armor plate royalty—Harvey process.**—The Secretary of the Navy should withhold his approval of the claim of the Carnegie Steel Company until the question of the right of the Harvey company to collect royalty from the Government has been judicially determined in a suit pending in the Court of Claims. 23 Op. 495.

**15. Same.**—The claim of the Bethlehem Steel Company for reimbursement for royalty paid, being based upon a contract similar to that of the Carnegie company, the Secretary should likewise withhold his approval of the claim of the Bethlehem company. *Ib.*

See 23 Op. 422.

**16. Commissions of military governors.**—The Secretary of the Navy may issue commissions to the naval officers serving as military governors of the islands of Guam and Tutuila. 25 Op. 292.

**17.** The Secretary of the Navy has authority to transfer control of certain land at San Juan, P. R., reserved by Executive order for naval purposes, to the Department of Commerce and Labor, for the extension of the light-house reservation at that place. 25 Op. 269.

**18. Employment of counsel in foreign countries.**—The Secretary of the Navy is not authorized in view of the provisions of section 189, Revised Statutes, to employ counsel in foreign countries to institute suit in behalf of the United States for the recovery of damages caused to a war vessel of the United States, but should refer the matter to the Department of Justice for attention. 21 Op. 195.

**19. Mitigation of fines, penalties, and forfeitures in timber depredation cases.**—The Secretary of the Navy has power under section 4751, Revised Statutes, to mitigate, before trial and conviction of the offender, any fine,

penalty, or forfeiture incurred under the provisions of the statutes therein referred to which relate to timber depredations. 17 Op. 282.

20. *Same.*—Where proceedings are already commenced, it is the duty of the prosecuting officer, upon receipt of the order of mitigation, and on the terms and conditions thereof being complied with, to carry it into effect by discontinuing the proceedings. *Ib.*

21. *Uncompleted dry dock—Appropriation exhausted.*—The Secretary of the Navy is without authority, in view of sections 3732, 3733, and 5503, Revised Statutes, to incur any obligation for work on an uncompleted dry dock when the appropriation has been exhausted, even though immediate action is very important. 21 Op. 288.

22. *Release of mortgage—Stevens Battery.*—It is competent for the Secretary of the Navy to release a mortgage given by Robert L. Stevens on the 9th of September, 1848, as security for the performance of a contract theretofore entered into by him for the construction of a war vessel since known as the "Stevens Battery," all interest of the United States in the construction of said vessel having been relinquished by the resolutions of July 17, 1862 (12 Stat. 628), and July 1, 1870 (16 Stat. 383). 17 Op. 281.

BATTLE SHIP CONTRACTS, PROPOSAL, SURETY, etc., and the construction and equipment of naval vessels generally. *See* NAVY, VII.

HAZING, DISMISSAL AND REINSTATEMENT OF NAVAL CADETS, INCLUDING POWER TO PERMIT CADET TO WITHDRAW RESIGNATION AFTER ACCEPTANCE. *See* NAVAL ACADEMY.

SUPPLIES, ORDNANCE, EQUIPMENT. *See* NAVY, I, f.

PURCHASE OF PATENT RIGHTS. *See* NAVY, 20, 21.

MONEYS RECOVERED FROM TIMBER DEPREDATIONS. *See* PUBLIC LANDS, XIII.

SURETY ON CONTRACTOR'S BOND. *See* SURETY, 9.

SURETY ON BOND OF PAY OFFICERS IN THE NAVY. *See* BONDS, 14.

POWER TO CONTRACT WITH PATENTEE FOR PURCHASE OF PATENT OR LICENSE TO USE IT. *See* PATENTS, 6-8.

### b. *Commissioner of Navigation.*

23. *Decision of—Claims of Sweden and Norway for return of tonnage dues.*—The President has no authority to reverse the decision of the Commissioner of Navigation so as to adjust the claims of Sweden and Norway for the return of tonnage dues alleged to have been erroneously exacted. Any application for relief should be addressed to the legislative branch of the Government. 20 Op. 367.

24. *Same.*—The decision of the Commissioner of Navigation is final on all questions of interpretation relating to the collection of tonnage taxes, and the refund thereof. *Ib.*

For officers of the several bureaus. *See* III—Bureaus.

### III. Bureaus.

25. *Chief of a bureau can not hold over.*—The chief of a bureau in the Navy Department can not lawfully hold over after the expiration of the term for which he was appointed. (Sec. 421, Rev. Stat.) 17 Op. 648.

26. *Same.*—The general rule is that where Congress has not authorized the officer to hold over, his incumbency must be deemed to cease at the end of his term, though no appointment of a successor may then be made. *Ib.*

27. *Death, resignation, or absence of chief of a bureau.*—A naval officer assigned to duty as an assistant to the chief of a bureau in the Navy Department is not authorized by section 178, Revised Statutes, in case of the death, resignation, absence, or sickness of the latter (where the President has not otherwise directed, as provided by sec. 179, Rev. Stat.), to perform the duties of such chief until his successor is appointed or until his sickness or absence shall cease. 19 Op. 503.

28. *Same.*—The phrase "assistant or deputy of such chief," etc., in said section 178, is to be construed as including an assistant or deputy only whose appointment is specifically provided for by statute. *Ib.*

29. *Bureau of Navigation—Captain retired while chief of the Bureau of Navigation—Rank—Pay.*—A captain in the Navy who was appointed chief of the Bureau of Navigation,



with the relative rank of commodore, should, in case of his retirement during his incumbency in that office and while borne on the Navy Register as captain, be placed on the retired list with the rank of captain. He would then be entitled to 75 per centum of the sea pay of officers of that rank. 17 Op. 154.

30. The chief of the Bureau of Medicine and Surgery in the Navy Department is amenable to the jurisdiction of a naval court-martial upon charges and specifications preferred against him for acts done as such chief. 18 Op. 176.

31. Chief of Bureau of Yards and Docks—Appointment.—An officer of the Corps of Engineers, not below the relative rank of captain, is eligible for appointment as chief of the Bureau of Yards and Docks. 22 Op. 47.

#### IV. Clerical force.

32. Employment of retired officer.—The Secretary of the Navy is not precluded by section 2 of the act of July 31, 1894 (28 Stat. 205), from employing a retired officer, under the act of February 19, 1897 (29 Stat. 565), to supervise the completion of certain tables of planets, as the act authorizing the expenditure does not create an office or contemplate any formalities in the selection of such an employee. 21 Op. 507.

33. Same.—The person to be employed may be designated either by order of the Secretary of the Navy or the head of the bureau having charge of the work to be done, which order need only designate the person selected as a competent mathematician and the compensation he is to receive. *Ib.*

34. Same.—An act of Congress authorizing the expenditure of money for the above-named purpose, providing no permanency to the term, with no requirement that the person employed shall either take an official oath or receive a commission, and no formalities in the selection of such an employee, does not create an office. *Ib.*

#### NAVY PENSION LIST.

See PENSIONS, II, b; REVENUE MARINE, 5.

#### NAVY PERSONNEL ACT.

Act of March 3, 1899 (30 Stat. 1004). 25 Op. 452, 508.

#### NAVY REGULATIONS.

See NAVY, VI.

#### NAVY-YARD.

1. Navy-yard closed by Executive order—Compensation.—Per diem employees at the Washington Navy-Yard on duty April 6, 1899, should be allowed and paid for that day without reduction of compensation for the portion of the day that the navy-yard was closed by executive order of the President. 22 Op. 472.

2. Navy-yard employees, Philippine Islands—Compensation on holidays.—The resolutions of January 6, 1885 (23 Stat. 516), and January 23, 1887 (24 Stat. 644), allowing pay to per diem employees "on duty in the United States," for services on certain legal holidays, do not extend to the Philippine Islands. 25 Op. 127.

#### NEGLIGENCE.

See NAVIGABLE WATERS, III, 181.

#### NEGOTIABLE INSTRUMENTS.

1. Checks of disbursing officers of the Government drawn upon the public Treasury or an assistant treasurer of the United States may be properly indorsed and transferred by either the payee, indorsee, or by an agent of either, acting as such under a power of attorney from such payee or indorsee. 22 Op. 637.

2. Negotiable paper may be transferred so as to pass the title and ownership, by the indorsement of the payee or indorsee thereon, which may be made as well by the agent of such payee or indorsee as by such principal. *Ib.*

3. In the making of such indorsement it is only necessary that the agent act by the au-

thority of the principal, which authority may be conferred by power of attorney, by writing, orally, or by a continual practice or use with the permission of the principal. No special form is required so long as the agent acted by authority of the principal. *Ib.*

4. A promissory note is an unconditional promise to pay to another's order, or bearer, a stated sum of money at a specified or implied time. 22 Op. 369.

*See also* INTERNAL REVENUE, II, f. (2).

### NEUTRALITY.

1. The rules of international law with respect to belligerent and neutral rights and duties do not apply to the present Cuban insurrection. 21 Op. 267.

2. The failure of the United States to pass neutrality laws would not diminish its international obligations, nor would the passing thereof increase such obligations. *Ib.*

3. The mere sale or shipment of arms and munitions of war by persons in the United States to persons in Cuba is not a violation of international law, however strong a suspicion there may be that they are to be used in an insurrection against the Spanish Government. Individuals in the United States have a right to sell such articles and ship them to whoever may choose to buy. *Ib.*

4. The goods, and sometimes the ship carrying them, are subject to seizure by the government within whose jurisdiction they may come, if its domestic laws or regulations are violated, but international law imposes no duty upon our Government with respect to such transactions. *Ib.*

5. The sale and shipment or carriage of such articles to Cuba does not become a violation of international law merely because they are not destined to a port thereof which is recognized by the Spanish Government as open to commerce, nor because they are to be, or are, landed by stealth. *Ib.*

6. If, however, the persons supplying or carrying arms and munitions from a place in the United States are in any wise parties to a design that force shall be employed against the authorities of Spain, or that, either in the United States or elsewhere, before final delivery of such arms and munitions, men with

hostile purpose toward the Spanish Government shall also be taken on board and transported in furtherance of such purpose, the enterprise is not commercial but military, and is in violation of international law and of the United States Statutes. *Ib.*

7. The duty of the United States, when a state of war is declared or recognized by another country, is of its own motion to use diligence to discover and prevent within its borders the formation or departure of any military expedition intended to carry on or take part in such war. *Ib.*

8. The neutrality laws of the United States, so called because their main purpose is to carry out the obligations imposed upon the United States while occupying a position of neutrality toward belligerents, were intended to prevent offenses against friendly powers, whether they should or should not be engaged in war or in attempting to suppress revolt. 21 Op. 267.

9. Military supplies—Horses.—A general statement of the law to be applied in the matter of the shipment of horses from New Orleans to South Africa, for military purposes, and the alleged establishment of foreign agencies in the United States for the purchase and shipment of hostile supplies (horses and mules) for use against a third party. 24 Op. 15.

10. Same—Contraband.—According to the weight of authority, the sale of contraband or war supplies to a belligerent is not unlawful, or a thing which a neutral nation must forbid to its citizens. *Ib.*

11. Same—Commerce.—A neutral nation must not give aid to one of the belligerents in the carrying on of war; but the carrying on of commerce with the belligerent nations in the manner usual before the war is not in itself the giving of such aid. *Ib.*

12. Same—Commerce.—The mere increased demand for warlike articles, and their consequent increased quantity in the commerce between the neutral and the belligerent countries, does not of itself make the commerce cease to be the same that was usual before the war. *Ib.*

13. Same.—A belligerent may seize merchandise at sea involved in such commerce when it is the property of his enemy, or when it is composed of articles for direct and immediate use for warlike purposes. *Ib.*

14. **Same—Due diligence.**—The fact that neutral individuals, instead of their government, give aid to the belligerent, does not relieve the neutral government from guilt; but the government is innocent if the acts of individuals are such as, from their nature, make it impracticable or excessively burdensome for the government to watch and prevent, or, if preventable without excessive burden, the government uses due diligence about their prevention. *Id.*

15. **Same—Obligation of the Government.**—The fact that neutral merchants give aid to belligerents purely from motives of gain seeking does not relieve their government from its obligation to prevent such aid being given. *Id.*

16. **Same—Points by which to be guided.**—In determining whether a series of transactions which, in one aspect are commercial in character, are prohibited to the neutral nation and its people as being an aid to one of the belligerents in carrying on war against the other, the criteria are practically impossible to specify in advance. Among the points by which to be guided in determining that question are the systematic character of the transactions, their greater or less extensiveness, their persistence in time, their governmental character or the absence of it, their objects and results, and, principally, their relation, if any, to the prosecution of the war being carried on by the belligerent. *Id.*

17. **Arms—China.**—The mere shipment or exportation of arms, in the way of commerce, to a country in which there are insurrectionary movements, does not seem to be prohibited by the statutes of the United States or by the law of nations. 24 Op. 25.

*See also* INTERNATIONAL LAW.

#### NEW MEXICO.

The commissioner from New Mexico to the world's fair of 1893, appointed under the act of April 25, 1890 (26 Stat. 62), may be removed by the concurrent action of the governor and the President, although the statutes contain no express provisions therefor. The appointment of a successor to fill the vacancy thus created was legally made. 20 Op. 641.

#### NEW ORLEANS PACIFIC RAILWAY COMPANY.

*See* RAILROADS, 41, 52.

#### NEW YORK HARBOR ACT.

*See* DEPARTMENT OF COMMERCE AND LABOR, 17, 18.

#### NEW YORK STATE.

*See* CLAIMS, 42.

#### NEWSPAPERS.

SUNDAY MAGAZINE SECTIONS. *See* POSTAL SERVICE, V, 120–122.

#### NIAGARA RIVER BRIDGE.

*See* NAVIGABLE WATERS, 110

#### NO MAN'S LAND.

1. **Jurisdiction of crimes.**—The strip of territory known as “No Man’s Land” not being within any existing judicial district, punishment of crime committed therein will not be within reach of the criminal law of the United States (see sixth article of amendments to the Constitution) until legislative action is had ascertaining the district which shall embrace such strip. 19 Op. 66.

2. **Same.**—Upon reexamination of the question whether the territory called “No Man’s Land” lies within the boundaries of any judicial district of the United States: *Advised* (1) that from January 6, 1883, to March 1, 1889, said territory was included within the boundaries of the judicial district for the northern district of Texas; (2) that since March 1, 1889, it has been and is included in the judicial district for the eastern district of Texas. Opinion of Attorney-General Garland of November 15, 1887 (19 Op. 66), dissented from. 19 Op. 477.

3. Same.—Violations of laws of the United States committed within that territory are properly cognizable in the circuit and district courts of the United States for the eastern district of Texas. *Id.*

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#### NOLAN LAND CLAIM.

*See* PUBLIC LANDS, XII, 43.

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#### NOMINATIONS.

*See* ARMY, II, 67; NAVAL ACADEMY, 28; APPOINTMENT.

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#### NORFOLK HARBOR POWDER OFFICER.

JURISDICTION OF. *See* UNITED STATES, 5.

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#### NORFOLK, VA., DRY DOCK.

JURISDICTION OF STATE HARBOR COMMISSIONERS. *See* UNITED STATES, 22.

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#### NORTH AMERICAN COMMERCIAL COMPANY.

*See* SEAL FISHERIES, II; ALASKA, 10.

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#### NORTH CAROLINA CHEROKEES.

*See* INDIANS, I, d.

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#### NORTH DAKOTA.

UNIVERSITY LAND GRANTS. *See* PUBLIC LANDS, VI.

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#### NORTHERN PACIFIC RAILROAD COMPANY.

*See* RAILROADS, II, b; III, 43, 44, 60, 63; RESERVATIONS AND PARKS, 11.

#### NOTARIES.

1. A notary's authority to administer an oath does not exist by virtue of his office, but is derived from positive enactment. 20 Op. 455.

2. A notary of Austria-Hungary, who is not authorized by the laws of his country to administer oaths or take affidavits lacks the requisite authority to administer the oath prescribed by section 4892, Revised Statutes. *Id.*

*See also* DISTRICT OF COLUMBIA, 23.

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#### NOTES IN CIRCULATION.

*See* INTERNAL REVENUE, II, c.

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#### NOTICE OF PAYMENT OF BONDS.

*See* TREASURY DEPARTMENT, VI.

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#### NUMBER IN GRADE.

*See* NAVY, II, d, 88.

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#### OAKLAND HARBOR, CALIFORNIA.

*See* NAVIGABLE WATERS, II, c, 100.

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#### OATH.

AUTHORITY OF NOTARY PUBLIC TO ADMINISTER, *see* NOTARIES.

FORM OF, UPON MAKING ENTRY, *see* CUSTOMS LAWS, III, 63.

OATH OF OFFICE, *see* OFFICE, III; CONSULAR COURTS, 3; DEPARTMENT OF COMMERCE AND LABOR, 34.

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#### OBLIGATIONS AND SECURITIES OF THE UNITED STATES.

*See* POSTAL SERVICE, 114, 115; TREASURY DEPARTMENT, V, VI.

## OBSTRUCTION TO NAVIGATION.

*See* NAVIGABLE WATERS, III.

## OCEAN MAIL SERVICE.

1. The authority to make contracts for carrying the mail between ports of the United States and foreign ports, given by section 4007, Revised Statutes, is limited by section 4009, Revised Statutes, with respect to the amount of compensation; so that in such contracts under the former section no greater compensation can be allowed to American steamship lines than the sea and inland postage upon the mail transported. 18 Op. 248.

2. The word "mile," as used in section 5 of the act of March 3, 1891 (26 Stat. 830), to provide for ocean mail service between the United States and foreign ports, etc., means a mile of 5,280 feet, and not a geographical mile. 20 Op. 98.

3. The act of March 3, 1891 (26 Stat. 830), providing for ocean mail service between the United States and foreign ports, confers no authority upon the Postmaster-General to vary at his discretion the operation of contracts entered into under that act. Such powers, if any, as are given in that act, should be strictly construed. 20 Op. 161.

4. *Same.*—The Postmaster-General is not authorized under the above-named act to discontinue, during the contract term, the service performed by a ship of the lower class and transfer it to a ship of the higher class, where the contractor offers the latter, if the change involves any increase in the rate of compensation. *Ib.*

5. *Same.*—Section 2 of that act does not authorize the Postmaster-General after the commencement of service on any ocean mail route, to increase the number of ships thereon, and make proportionate payment for the same, as that section relates merely to the details of the mode of advertising and letting such contracts. *Ib.*

6. *Same.*—Annulment of contract.—The Postmaster-General may insert a condition in any contract forbidding its annulment during the contract term without the mutual consent of the parties thereto, but it would not prevent either the Government or the contractor from avoiding the contract for a breach of its

terms. In the absence of the breach the contract could not be annulled, save by mutual consent, whether the condition proposed was inserted or not. *Ib.*

7. *Same.*—A corporation organized under the laws of any State in the Union is an American citizen within the meaning of the act. *Ib.*

8. *Same.*—The Postmaster-General may advertise for a limited or weekly service on any route for a definite period, at which time a shorter or triweekly service shall begin and be continued to the end of the contract term. Under such a contract the term would begin with the limited service, and extend in its entirety not longer than ten years. *Ib.*

9. *Same.*—The Postmaster-General may advertise for a service between New York and the continent of Europe for the full term of ten years, to be conducted in ships of either the first or second class, conditioned for the commencement of the service in ships of the lower grade, and the substitution of ships of a higher grade at a time specified, within the contract term, at a higher rate of compensation, thus involving two kinds of service at different rates of pay in the same contract. *Ib.*

10. *Same.*—There is no objection to inviting proposals in the alternative as to two different routes between the United States and Great Britain, but one route only to be contracted for, provided each alternative contains every specification required by section 2 of the above named act. *Ib.*

11. *Same.*—In a contract for service to the continent of Europe in vessels of the second class no provision can be made for the delivery of mails at Southampton, England, as an intermediate point, as the statute limits service between the United States and England to vessels of the first class. *Ib.*

12. A person bidding, pursuant to the act of March 3, 1891 (26 Stat. 830), on various routes for foreign mails, can not refuse to carry out one bid because another was not accepted, even if he verbally said his bid was conditioned on his receiving both contracts. 20 Op. 293.

13. *Same.*—Section 817, Postal Laws and Regulations, respecting discontinuances of mail service, does not apply to contracts made under the above named act. *Ib.*

14. *Same.*—A person honestly refusing to carry out his bid because another route was not

also awarded him can not be prosecuted under section 3954, Revised Statutes, as amended August 11, 1876 (19 Stat. 130). *Ib.*

15. **Same.**—Action may, however, be brought against him and the sureties on his bond under section 3945, Revised Statutes, as amended by the act of January 23, 1874, section 12 (18 Stat. 235). *Ib.*

16. The Postmaster-General may properly accept a proposal from the Pacific Mail Steamship Company, the holder of a contract with the Government for performing second-class mail service, to perform first-class mail service under the subsidy act of March 3, 1891 (26 Stat. 830), on the condition that if the proposal be accepted the existing contract shall be rescinded, but the company should be required to stipulate for the safety of the Government that in consideration of the above, the existing contract shall, at the option of the Postmaster-General, be void in case some other party than the company shall be the successful bidder for first-class service. 20 Op. 304.

17. Where a contract has been entered into with a party for foreign mail service for a term of ten years under the act of March 3, 1891 (26 Stat. 830), it is not competent to make a new contract with that same party for five years in lieu of the ten years unless the party procured the same by new bidding after due advertisement. Any change in the terms of the contract between the parties releases the sureties on said contract from subsequent liability. 20 Op. 321.

18. Where a contract is made with a company for carrying the foreign mails pursuant to the act of March 3, 1891 (26 Stat. 830), in vessels of the third class, but the Secretary of the Navy accepts the vessels as of the fourth class, but not of the third class, the company can not be paid at the rate of compensation provided for in the act for vessels of the third class, nor even at the rate prescribed for vessels of the fourth class, but must be paid under section 4009 of the Revised Statutes. 20 Op. 409.

#### OFFENSES.

COMMITTED ON THE HIGH SEAS. *See* TREATIES, IV, 62.

GENERALLY. *See* the particular subjects to which the offenses relate.

#### OFFICE AND OFFICERS.

- I. In General—What Constitutes, 1–13.
- II. Appointment, Vacancy, etc., 14–52.
- III. Oath of Office—Qualification, 53–66.
- IV. Tenure of Office—Holding Over, 67–73.
- V. Holding More Than One Office, 74–89.  
*Performing Duties of Vacant Office,*  
*see* 19, 20.
- VI. Eligibility—Disability, 90.
- VII. Compensation, Payment, Assignment, 91–104.

#### I. In General—What Constitutes.

1. There may be a *de facto* officer, but never a *de facto* office. 19 Op. 443, 449.

2. A Member of Congress is not an "officer of the Government" within the meaning of the provision in section 6 of the act of August 15, 1876 (19 Stat. 169), whereby "all executive officers or employees of the United States, not appointed by the President with the advice and consent of the Senate, are prohibited from requesting, giving to, or receiving from any other officer or employee of the Government any money or property or other thing of value for political purposes," etc. 17 Op. 419.

3. The words, "every person elected or appointed to any office of honor or profit, either in the civil, military, or naval service," employed in section 1756, Revised Statutes, which prescribes an oath of office, includes Members of Congress. *Ib.*

4. In section 1786, Revised Statutes, which provides that "whenever any person holds office, except as a Member of Congress, or of some State legislature, contrary to the provisions of the third section of the fourteenth article of amendment to the constitution," he shall be proceeded against, etc., the station of Member of Congress is distinctly recognized as an office. *Ib.*

5. But it seems that a Member of Congress is not an officer of the United States within the constitutional meaning of the term. *Ib.* (420.)

6. Army officers on the retired list hold public office. 25 Op. 185.

7. The advancement of a retired army officer, as authorized by the act of April 23, 1904 (33 Stat. 264), does not create an office, and is not

- accomplished by an exercise of the appointing power. *Ib.*

8. A referee appointed by the Court of Claims under the act of June 16, 1880 (21 Stat. 284), does not hold an office under the Government within the meaning of section 1763, Revised Statutes. 18 Op. 304.

9. The members of the California Débris Commission, established by the act of March 1, 1893 (27 Stat. 507), do not hold civil office within the meaning of the Revised Statutes, section 1222, nor does Revised Statutes, section 1224, necessitate their withdrawal from the Engineer Corps. 20 Op. 604.

10. Mathematicians to supervise the completion of certain tables of planets.—An act of Congress making appropriation for the employment of a competent mathematician to supervise the completion of certain tables of planets, providing no permanency to the term, with no requirement that the person employed shall either take an official oath or receive a commission, and no formalities in the selection of such an employee, does not create an office. 21 Op. 507.

11. Whenever power is given to public officers to be exercised for the public interest the language used, though permissive in form, is mandatory. 21 Op. 167.

12. Where a statute imposes a particular duty upon an executive officer, and he has performed the duty according to his understanding of the law, there is no appeal from his action or his decision, unless such appeal is expressly provided by law. His decision is final and conclusive. (See 16 Op. 317; 1 Op. 624; 2 id. 481-482; 5 id. 275; 11 id. 14; *United States v. Ferriera*, 13 Howard, 40.) 17 Op. 353.

13. Official power.—Authority for exercise of.—As a general rule, when it is sought to exercise any official power or function, explicit authority must be found in the law; but the application of this doctrine is not necessarily universal, and depends upon the character and relations of the particular power and all the germane circumstances. 25 Op. 98.

## II. Appointment, Vacancy, etc.

14. Ad interim appointments.—Head of a Department.—Under sections 177, 178, 179, and 180, Revised Statutes, the President has

power to temporarily fill (by an appointment *ad interim*, as there prescribed) a vacancy occasioned by the death or resignation of the head of a Department, or of the chief of a bureau therein, for a period of ten days only. When the vacancy is thus temporarily filled once for that period, the power conferred by the statute is exhausted. It is not competent to the President to appoint either the same or another officer to thereafter perform the duties of the vacant office for an additional period of ten days. 16 Op. 596.

15. Same.—Sections 177, 178, 179, and 180, Revised Statutes, considered with reference to the power of the President to make *ad interim* appointments, and opinion of Attorney-General Devens (16 Op. 596, 597) concurred in. 17 Op. 530.

16. Temporary appointments to fill vacancies.—Section 180, Revised Statutes, providing that vacancies occasioned by the death or resignation of an officer of an Executive Department must not be temporarily filled for a longer period than ten days applies as well where they are filled (under sections 177 or 178, Revised Statutes) without action by the President, as where they are filled (under section 179, Revised Statutes) by his authority and direction. 17 Op. 535.

17. Same.—The discretionary power given the President by section 179, Revised Statutes, may be exercised after the vacancy has already been supplied under the operation of either of the two preceding sections; and in that case the ten days' limitation is to be computed from the date of the President's action. *Ib.*

18. Same.—President may fill office for an additional ten days after the office has already been filled by a subordinate for ten days.—While, therefore, the Deputy Commissioner, upon whom the duties of the office of Commissioner of Internal Revenue temporarily devolved by virtue of section 178, can not fill the office for a longer period than ten days, it is competent to the President, under the provisions of section 179, to designate the same or another departmental officer whose appointment is vested in the President and Senate, to perform the duties of such office, and the officer so designated may thereafter lawfully perform those duties for a period not exceeding ten days. *Ib.* (536.)

19. A vacancy in the head of a Department can not be temporarily filled for a longer period than ten days, either by operation of law or by designation of the President. 20 Op. 8.

20. Same.—The view expressed in 17 Op. 535, that twenty days may be taken to fill such vacancy by allowing the statutory occupation of the office for ten days, followed by a designation by the President for an additional ten days, is not accepted. *Ib.*

21. Performing duties of vacant office.—Where the office of Sixth Auditor became vacant by the death of the incumbent, and the duties thereof devolved by operation of the statute upon the deputy auditor: *Advised* that the period during which such duties may be discharged by the deputy is limited by statute to ten days. 18 Op. 50.

22. Same.—In the case of a vacancy in the office of Secretary of the Treasury, caused by the death of the incumbent, the duties of the office can not be performed by any other officer, under sections 177, 179, 180, and 181, Revised Statutes, for a longer period than ten days. 18 Op. 58.

23. Temporary recess appointments.—The President has the right under the Constitution, and impliedly under section 181, Revised Statutes, to make a temporary appointment, designation, or assignment of one officer to perform the duties of another in the case of a vacancy caused by death, disability, or otherwise, during the recess of the Senate, and such temporary appointment, designation, or assignment is not limited by law to any particular period. 25 Op. 258.

24. *Ad interim* appointment.—The vacancy in the office of Paymaster-General, created by the retirement of Gen. William B. Rochester, may be filled by an *ad interim* appointment or assignment under the provisions of section 179, Revised Statutes. Said retired officer may be said to be "absent" within the meaning of that section. 19 Op. 500.

25. Appointment during holiday adjournment.—The President is not authorized to appoint an appraiser at the port of New York during the current holiday adjournment of the Senate, which will have the effect of an appointment made in the recess occurring between two sessions of the Senate. 23 Op. 599.

26. Same.—Distinction between an appointment and a nomination.—There is no distinc-

tion between an appointment and a nomination other than the fact that the President nominates for appointment when the Senate is in session, and appoints when he fills a vacancy temporarily during the recess of the Senate. *Ib.*

27. Same.—Distinction between a recess of the Senate and an adjournment.—The recess of the Senate during which the President shall have power to fill a vacancy that may happen (Cons. Art. II, sec. 2, clause 3) means the period after the final adjournment of Congress for the session and before the next session begins—while an adjournment during a session of Congress means a merely temporary suspension of business from day to day, or for such brief periods of time as are agreed upon by the joint action of the two Houses. *Ib.*

28. Recess appointments.—A vacancy in an office which happens during a session of the Senate, but which remains unfilled until a recess of the Senate occurs, may be filled by the President during such recess by a temporary appointment. 19 Op. 261.

29. Same.—The rule is the same in the case of a new office, which is not filled during the session in which it was created. The President may fill the original vacancy existing therein by a temporary appointment made during the recess of the Senate. *Ib.*

30. Recess appointments—Original vacancies.—The provisions of section 1769, Revised Statutes, relative to filling vacancies during a recess of the Senate, are limited to vacancies happening by death or resignation or expiration of term of office, but do not apply to original vacancies. 18 Op. 28.

31. Same.—Temporary appointment.—When an office is created by a law taking effect during a session of the Senate, and no nomination is made thereto, the original vacancy thus existing may be filled by the President during the ensuing recess of the Senate by a temporary appointment. *Ib.*

32. Temporary appointment.—The power of the President to fill vacancies in office by temporary appointment, derived under section 2, Article II, of the Constitution, comprehends all vacancies that may happen to exist in a recess of the Senate, irrespective of the time when such vacancies first occur. 18 Op. 29.

33. Recess appointments—Salary.—An office which has become vacant during a ses-



sion of the Senate may be filled during the next ensuing recess of the Senate by a temporary appointment by the President; but by section 1761, Revised Statutes, payment of the salary of the appointee in such cases is postponed until he has been confirmed by the Senate. 17 Op. 521.

34. **Accepting an appointment to an office,** the term of which is to commence in futuro does not, until such term actually commences, affect an office previously held by the appointee. 20 Op. 593.

35. **The general rule is that,** where there is no express enactment to the contrary, the appointment of any officer of the United States belongs to the President by and with the advice and consent of the Senate. 17 Op. 532.

36. **Under the law at present in force,** assistant engineers in the Revenue-Cutter Service should be appointed by the President with the concurrence of the Senate. *Ib.*

37. **The President can appoint to office only those who are eligible under the Constitution.** His appointment of one not eligible is a nullity. 21 Op. 211.

38. **When Congress in pursuance of its authority under Article II, section 2, paragraph 2, of the Constitution, sees fit to give the sole power of appointment to the President,** it does so by language appropriate to that end, such as the unqualified phrase "may appoint" in section 1680 (see also R. S., secs. 88, 555, 677, 1053, 1313, 1411, 2538; sec. 19, act of May 28, 1896, 2 Supp. R. S., 485; act of Mar. 3, 1897, id. 578); and, on the other hand, when Congress means the appointment to an office established by law to be made by and with the advice and consent of the Senate the intention to that effect is specifically shown by the language used (sec. 2, act of June 11, 1878, 1 Supp. R. S., 174; act of June 4, 1897, 30 Stat., 58; act of Apr. 12, 1900, secs. 17, 18, 34, 40; act of Apr. 30, 1900, secs. 66, 69, 80, 86). 23 Op. 138.

39. **The nomination and confirmation of a person who, at the time, is ineligible for the office by force of section 6, Article I of the Constitution, can not be made the basis of his appointment to such office after his ineligibility ceases.** 17 Op. 522.

40. **Preference—Honorably discharged soldiers and sailors.**—By section 1754, Revised Statutes, it is made the duty of those making appointments to civil offices to give a prefer-

ence, other things being equal, to the class of persons named in that section; but the matter of capacity and personal fitness for the place is for the determination of the appointing power. 19 Op. 318.

*See also* CIVIL SERVICE, V.

41. **The President may appoint the officers of the line and staff of the Navy authorized by the act of May 4, 1898 (30 Stat. 369), without the advice and consent of the Senate.** 22 Op. 82.

42. **Same.**—A commission issued pursuant to the foregoing act should show upon its face that it is the commission of the President, but his actual signature is not necessary. The document should, however, declare the act to be that of the President, performed by the head of the Navy Department as his representative. *Ib.*

43. **If a battalion is made up of companies contributed by two or more States the officers of the battalion as such must be appointed by the President.** 22 Op. 147.

44. **Regimental officers of such regiments as may be formed by contributions of companies from two or more States are to be appointed by the President of the United States, under the constitutional provisions which make him the Commander in Chief of the Army and Navy and which authorize him to appoint all officers of the United States whose appointment is not otherwise provided for by law.** 22 Op. 135.

45. **Appointment of a captain in the Quartermaster's Department—Confirmation by Senate not necessary.**—It being the intention of Congress, as expressed in the sixteenth section of the act of February 2, 1901 (31 Stat. 751), not to require confirmation of appointments in the grade of captain in the Quartermaster's Department, the appointment of Captain A, of that Department, on June 14, 1901, was not a recess appointment, the concurrence of the Senate was not necessary, and the action of the President alone was final and complete. 23 Op. 574.

46. **Subsequent vacancies—Promotion.**—The only vacancy which the President is authorized to fill under sections 16 and 26 of that act is an original vacancy. After such vacancy has been filled there is no longer an original vacancy in that particular place, and any subsequent vacancy must be filled by promotion or by detail. *Ib.*

47. The appointment of the assistant collector at the port of New York (who was formerly employed by the collector with the approval of the Secretary of the Treasury, should now, by virtue of the effect of section 5596, Revised Statutes, be made by the President with the advice and consent of the Senate. 18 Op. 98.

48. Collector of internal revenue—Suspension.—The President has the undoubted right during a recess of the Senate, to suspend from office a collector of Internal Revenue, with or without cause, and to designate some one else to perform the duties of that office (sec. 1768, Rev. Stat.). 18 Op. 318.

49. The office of chief examiner in the Civil Service Commission, created by the act of January 16, 1883 (22 Stat. 403), is to be filled by appointment by the President, with the advice and consent of the Senate, since that officer comes within the terms "all other officers of the United States," in clause 2 section 2, Article II, of the Constitution. 18 Op. 409.

50. The President can not appoint an honorary commissioner to the "Inventions International Exposition" at London, such office not existing by virtue of any law of the United States. 18 Op. 171.

51. Appointment of Chinese secretary.—The President is authorized to sign the commission of the Chinese secretary, whose appointment is authorized under the act of April 4, 1900 (31 Stat. 60), in the same manner as he does those of other interpreters who are not confirmed by the Senate. 23 Op. 136.

52. Appointment of student interpreters at legation to China.—The President is authorized, under the provisions of the diplomatic and consular appropriation act of March 22, 1902 (32 Stat. 78), to appoint the 10 student interpreters at the legation to China therein provided for, without sending their names to the Senate for confirmation. 24 Op. 52.

See also ARMY; NAVY; CIVIL SERVICE; THE VARIOUS EXECUTIVE DEPARTMENTS; PRESIDENT, ETC.

### III. Oath of Office.—Qualification.

53. Members of Congress—Oath of office—Office.—The words "every person elected or appointed to any office of honor or profit, either in the civil, military, or naval service," employed in section 1756, Revised

Statutes, which prescribes an oath of office, includes Members of Congress. So in section 1786, which provides that "whenever any person holding office, except as a Member of Congress," etc., the station of Member of Congress is distinctly recognized as an office. 17 Op. 419.

54. Indian incompetent to take oath of office.—An Indian residing in the Indian Territory, who is a member of one of the tribes there and not a citizen of the United States and is subject to tribal jurisdiction, is not eligible to appointment as a postmaster, he being incompetent, in contemplation of law, to take the required oath of office. 18 Op. 181.

55. Indian not competent to take oath of office.—"The condition of an Indian who is a member of a tribe, and especially one who dwells within the territory and jurisdiction of his tribe, is peculiar. He is regarded and treated by our Government as belonging to a separate though dependent political community, the members of which owe immediate allegiance thereto, and are not ordinarily dealt with by the Government *individually*, so long as their tribal relation is preserved. The obligation imposed by the oath does not seem to be consistent with the duty of obedience to tribal authority which springs from such relation, and the existence of which is distinctly recognized by our Government, and its effect would obviously be to greatly weaken if not destroy that relation. Unless clearly warranted by the provisions of some treaty or statute, an act which thus interferes with the tribal relation, and is productive of consequences so discordant and in such direct conflict with the authority of the tribe over its members and their allegiance thereto, must be deemed to have no sanction in our laws. Therefore an Indian, while a member of a tribe and subject to tribal jurisdiction, is not in legal contemplation competent to take the oath referred to." 18 Op. 183.

56. While postmasters, in common with all other officers of the United States except the President, are now required to take the oath of office prescribed in section 1757, Revised Statutes, they are not exempted from taking the oath prescribed by the act of March 5, 1874, (18 Stat. 19) relative to the performance of duties in the postal service, but must take this also. 18 Op. 182.

57. The *chargé d'affaires* to Paraguay and Uruguay, whose office was raised to minister, but who did not receive his commission or take the oath of office until nearly two months after appointment, is entitled to salary as minister from the date on which he qualified and entered upon the duties of the office, and not from the date of his appointment. 19 Op. 219. (2 Op. 27, 638; 3 Op. 105, 124, 641; 4 Op. 123, 250, 318, 348; 5 Op. 132; 7 Op. 304; 10 Op. 250, 308.)

58. Oath taken for a different office does not relieve.—Whatever form of oath is taken, the taking of the oath is a prerequisite to the entering upon the official duties or drawing salary therefor. That the minister prior to his appointment had taken the oath and entered upon the duty of a different office does not relieve him from the requirements of section 1756, Revised Statutes. 19 Op. 221.

59. Same.—Section 1756, Revised Statutes, provides that the appointee shall take the oath before he enters upon the duties of such office as he may be appointed to. That Mr. Bacon was his own successor does not relieve him from the provisions of the section, for it contemplates that the oath shall be taken at every new appointment before entering upon the duty. *Ib.*

60. Oath of acceptance.—Where a former Army officer was appointed from civil life to the position of major of engineers in the Army under the act of February 14, 1889 (25 Stat. 670), and thereupon was placed on the retired list of the Army as of that grade, he must take the oath required by section 1756, Revised Statutes, which act would be in law a legal acceptance of the office, and, as such, a sufficient formal acceptance. 19 Op. 283.

61. Regulation as regards taking the oath.—The Secretary of the Treasury has power, under section 161, Revised Statutes, to make a regulation which prescribes that the oaths to be taken by an officer of the Revenue-Marine Service, or an officer or employee in any branch of the customs service, to the correctness of his account for pay or salary, as required by sections 1790 and 2693, Revised Statutes, shall be taken before some person authorized to administer oaths generally. 19 Op. 401.

62. The fee paid by the officer or employee in such case for administering the oath does not constitute a proper charge against the United

States, and if charged in his account should not be allowed in the settlement thereof. *Ib.*

63. Marshals of consular courts.—Subjects of a foreign nation may be appointed marshals of consular courts and, when so appointed, need not, under the laws or regulations, take the oath prescribed by sections 1756 or 1757, Revised Statutes. All such officers should be required to take an oath or affirmation to faithfully perform the duties of their offices, and similar to that prescribed, except as to allegiance and support of the Constitution of the United States. Even if the sections referred to applied to such officers abroad who are foreign subjects, it might well be held that this, being as far a compliance therewith as is lawful, was a sufficient compliance. 23 Op. 608.

64. The territorial limitation prescribed by section 1758, Revised Statutes, with regard to the taking of oath of office means a State, Territory, or district within the United States, and refers to a district in the United States just as certainly as it does to a State or Territory within that limit, and refers to the District of Columbia. All the oaths, then, that are thus required to be taken may be taken in the United States. This would seem to operate, as many other provisions do operate, to limit the otherwise universal application of section 1756; so that the requirement may be no broader than the permitted performance, and so that no oaths are intended except such as may be taken in the only mode prescribed. 23 Op. 611.

65. Oath includes what.—While the section is in terms permissive only, it is in effect much more, for, as it says that all oaths which are required may be taken here, it is implied, of course, that none are intended but such as it was contemplated might be thus taken, and as it was not contemplated that all the various officers of the diplomatic and consular service would either be qualified here and go to those far-off countries, on the small salaries allowed, or come here to be qualified, it would seem that they were not within the intended purview of those sections. *Ib.*

66. Consul-general to Haiti—Qualification. A person appointed consul-general to Haiti, who takes the oath of office, but failing to execute a bond, as required by section 1697, Revised Statutes, his commission was not delivered to him, is not qualified to receive the com-

mission or to enter upon the duties of the office, and consequently is not entitled to pay as an incumbent of such office. 18 Op. 157.

**DISCHARGE OF SURETY, OR NOTICE TO SURETY.**

*See SURETY AND SURETY COMPANIES.*

**OFFICIAL BONDS.** *See BONDS.*

**IV. Tenure of Office—Holding Over.**

**67.** The act of March 3, 1887 (24 Stat. 500), repealing the tenure of office law (secs. 1767 to 1772, Revised Statutes), leaves unaffected such designations, nominations, and appointments as shall have been made before the repeal, and requires all business begun but unfinished before the repeal to be completed under the law as it then stood. 18 Op. 576.

**68.** Appointments and removals after the repeal are to be made under the law as it now exists. *Ib.*

**69.** Holding over.—The chief of a bureau in the Navy Department can not lawfully hold over after the expiration of the term for which he was appointed (sec. 421, R. S.). 17 Op. 448.

**70.** The general rule is that where Congress has not authorized the officer to hold over, his incumbency must be deemed to cease at the end of his term, though no appointment of a successor may then be made. *Ib.*

**71.** An assistant treasurer of the United States may lawfully continue to perform the duties of his office after the expiration of his term of four years, and until the qualification of his successor, Congress having expressly provided in the acts of March 2, 1895 (28 Stat. 808, 844), for the continuance in office of all officers of the Treasury Department under similar conditions. 25 Op. 636.

**72.** Same.—The sureties on the bond of an assistant treasurer continue liable for his acts while continuing in office after the expiration of his term and until the qualification of his successor. *Ib.*

**73.** Same.—The Secretary of the Treasury may defer the qualification of an assistant treasurer until a proper count can be made of the funds in the subtreasury under a predecessor, in accordance with the custom of the Treasury Department. *Ib.*

**V. Holding More than one Office.**

**74.** An inspector of customs who renders service as a special deputy marshal is not a public officer within the constitutional limitation as to appointment (Const. Art. II, sec. 2), and so can claim nothing by reason of section 1763, Revised Statutes. 17 Op. 685.

**75.** The holding of a State office by an officer or employee in the civil service of the United States is not prohibited by any act of Congress. 18 Op. 3.

**76.** Same—Prohibited by Executive orders.—But by Executive orders dated January 17 and 28, 1873, which have not been revoked, persons holding any civil office under the United States are expected, while holding such office, not to accept or hold any State, Territorial, or municipal office, with certain exceptions; otherwise they will be regarded as having resigned the office held under the United States. *Ib.*

**77.** Same.—In the case of an employee of the United States Fish Commission, not in the service by appointment, who holds the office of village constable: *Advised* that he may properly exercise the functions of the latter office, provided this does not interfere with the regular and efficient discharge of his employment under the Government. *Ib.*

**78.** An officer of the Army who was tendered a place on a "board of experts," created by a city ordinance to determine the most durable and best pavement for the streets of the city, should not, in view of the provisions of section 1222, Revised Statutes, accept the position offered. 18 Op. 11.

**79.** The detail of an officer of the Army to report to the president of the World's Columbian Commission, with a view to his assignment by the latter to the duties of an engineer in the preparation and construction of buildings, grounds, etc., for the Columbian Exposition, is within the prohibition of section 1224, Revised Statutes, provided that the performance of such duties requires the officer to be separated from his company, regiment, or corps, or interferes with the discharge of his military duties. 19 Op. 600.

**80.** Same.—Where a leave of absence is asked by an army officer, for the very purpose of enabling him to undertake the employments prohibited by said section, the granting of

such leave would be an evasion of the statute and be unwarranted. *Ib.*

81. A retired officer of the Army is not ineligible to receive a civil appointment at a fixed rate of compensation, to take charge of work in connection with the improvement of rivers and harbors. 19 Op. 283.

See also ARMY, 103-106, 112, 120, 121, 163.

82. Employment of retired naval officer to supervise completion of tables of planets.—The Secretary of the Navy is not precluded by section 2 of the act of July 31, 1894 (28 Stat. 205), from employing an officer retired under the act of February 19, 1897 (29 Stat. 565), to supervise the completion of certain tables of planets, as the act authorizing the expenditure does not create an office or contemplate any formalities in the selection of such an employee. 21 Op. 506.

83. The circuit judge appointed as a commissioner under the convention of February 8, 1896, with Great Britain, concerning claims growing out of seizures of vessels in Bering Sea, is entitled to compensation additional to that of his salary, notwithstanding sections 1763 and 1765, Revised Statutes, and section 2 of the act of July 31, 1894 (28 Stat. 205). 22 Op. 184.

84. *Same.*—This latter act should not be regarded as enacted by Congress to invade the domain of the treaty-making authority and establishing restrictions upon future occasional and temporary commissionerships created by international agreement, the nature and functions of which neither Congress nor the framers of Article II, section 2, of the Constitution, could wisely undertake or foresee. *Ib.*

85. *Same.*—The word "office," as used in section 2 of the act of 1894, is to be presumed, in the absence of indications to the contrary, not to embrace such commissionership, because it is not what is called a constitutional office. *Ib.*

86. The acceptance of an appointment as counsel for the delegates of the United States to the Pan-American Conference by a person who is engaged as an attorney in prosecuting claims before the Spanish Treaty Claims Commission would not subject such person to the penalties prescribed by section 5498, Revised Statutes. The penalties therein prescribed are for the prosecution of claims against the

United States by one who holds an office or place such as is described in that section. 23 Op. 533.

87. Incompatibility in law exists where the nature and duty of the two offices are such as to render it improper, from considerations of public policy, for one incumbent to hold both, and does not necessarily arise when the incumbent places himself for the time being in a position where it may be impossible for him to discharge the duties of both offices. 22 Op. 237.

88. Incompatible service.—The provision in section 12 of the customs administrative act of June 10, 1890 (26 Stat. 136), directing that a general appraiser "shall not be engaged in any other business, avocation, or employment," is not applicable to the case of a general appraiser detailed by the Secretary of the Treasury, without additional compensation, as "an expert to represent the United States in the international commission for the conversion of the present Chinese tariff into specific rates." That provision, in connection with other provisions of the law, means that such officer can not hold another office under the Government or be engaged in other incompatible Government service. 24 Op. 12.

89. *Same.*—There is no incompatibility between the office of general appraiser and the special service of expert for which such officer was detailed, the latter service being a mere employment without compensation, and not an office. *Ib.*

#### VI. Eligibility—Disability.

90. Rebellion—Effect of Pardon.—The third section of the fourteenth amendment of the Constitution, which provides that no person who having previously taken the oath to support the Constitution of the United States shall have engaged in insurrection or rebellion against the same shall hold any office, civil or military, under the United States or under any State, is not applicable to an officer who had received a full pardon from the President for such offense prior to the adoption of that amendment. 18 Op. 149.

#### VII. Compensation, Payment, Assignment.

91. Where an office which has become vacant during a session of the Senate is filled tempo-

rarily during the recess of the Senate, payment of such appointee is postponed until he has been confirmed by the Senate. 17 Op. 521.

92. Where an inspector of customs, while holding that office, rendered service as a special deputy marshal under section 2031, Revised Statutes: *Held* that he is prohibited by the third section of the act of June 20, 1874 (18 Stat. 109), from receiving any compensation for such service beyond his salary as inspector of customs. 17 Op. 684.

93. The word "payment," as used in the proviso to section 3 of the act of June 20, 1874 (18 Stat. 109), signifies to fix or determine the compensation for the services referred to; and the proviso is a virtual recognition of the practical construction given the act of June 22, 1870 (sec. 189, Rev. Stat.). 19 Op. 65.

94. The elements necessary to justify the payment of compensation to an officer of the Government for additional services are that they shall be performed by virtue of a separate and distinct appointment authorized by law; that such services shall not be services added to or connected with the regular duties of the place he holds; and that a compensation whose amount is fixed by law or regulation shall be provided for their payment. 19 Op. 121.

95. Compensation of clerk for superintending erection of Government building.—It was competent for the Secretary of War, under the act of June 16, 1880 (21 Stat. 260), providing for the construction of a building at the corner of 17th and F streets, Washington, D. C., to designate a clerk from the office of the Chief of Engineers to take charge and superintend the work, and to compensate him from the fund appropriated, his salary and services as clerk having been suspended during the period. The case is not within section 1765, Revised Statutes, there being no "additional pay, extra allowance, or compensation" received by said clerk. 17 Op. 321.

96. Extra compensation of officer of Post-Office Department for preparing new edition of Postal Laws and Regulations.—The act of March 3, 1891 (26 Stat. 880), appropriating money for a new edition of the Postal Laws and Regulations, does not authorize the Postmaster-General to grant extra compensation to any officer of his Department whom he may designate to perform the preparation of that work. 20 Op. 221.

97. Additional compensation.—Section 1765, Revised Statutes, and section 3 of the act of June 20, 1874 (18 Stat. 109), prohibit an officer of any branch of the Government from receiving additional or extra compensation for any service rendered by him, if the service so rendered have any affinity or connection with the duties of his office, unless such compensation is "authorized by law and the appropriation therefor explicitly states that it is for such additional pay, extra allowance, or compensation." 20 Op. 223.

98. A United States marshal appointed an agent, in pursuance of section 5276, Revised Statutes, to bring back a fugitive criminal from a foreign country, is entitled to receive compensation for this service out of the fund appropriated "for bringing home fugitive criminals," where the amount of the compensation is fixed by regulation before his appointment; otherwise he is entitled to be paid his expenses only. 19 Op. 121.

99. The circuit judge appointed as a commissioner under the convention of February 8, 1896, with Great Britain, is entitled to compensation additional to that of his salary, notwithstanding sections 1763 and 1765, Revised Statutes, and section 2 of the act of July 31, 1894. 22 Op. 184.

*See also UNITED STATES ATTORNEYS; UNITED STATES MARSHALS; CUSTOMS LAW, IX, h; and under appropriate headings for any particular officer in question.*

100. Payment by mistake.—Where money was paid by a United States marshal, under a mistake of fact, to a person who subsequently became an officer in the postal service: *Held* that the latter is in arrears to the United States for the amount so paid, and that it may be set off against his compensation as such officer. 17 Op. 677.

101. Where an officer's account for the same month was paid twice by different paymasters, one payment being made in November and the other in December: *Held* that the paymaster who made the last payment is chargeable with the overpayment. 17 Op. 425.

102. In such case the Government may hold liable for the overpayment both the officer who made and the officer who received the payment. *Id.*

103.—Assignment of pay account—Officer in arrears.—Where an Army officer assigned his pay accounts in payment of certain indebted-

ness, which accounts the Paymaster-General declined to pay, for the reason that on the maturity thereof the officer was in arrears to the United States: *Held* that the refusal of the Paymaster-General was in accordance with section 1766, Revised Statutes. 17 Op. 30.

104. *Same*.—Section 1766, Revised Statutes, does not require that, before payment is withheld, the officer shall be adjudged in arrears in a suit brought against him. *Ib*.

ARMY OFFICERS. *See* ARMY, II.

NAVY OFFICERS. *See* NAVY, II.

OFFICERS OF THE MARINE CORPS. *See* NAVY, III.

OFFICERS OF THE LINE. *See* NAVY, 89-92.

Officers of the various Executive Departments.

*See* those Departments severally, uniformly under division, II.

MEMBERS OF CONGRESS. *See* CONGRESS, 6.

RENDITION OF ACCOUNTS. *See* TREASURY DEPARTMENT, II, h.

*See also* GENERAL ARBITRATION BOARD; and PAN-AMERICAN CONFERENCE.

#### OFFICIAL BONDS.

*See* BONDS, II.

#### OFFICIAL MAIL.

*See* POSTAL SERVICE, VI, VII.

#### OFFICIAL RECORDS.

OF AN EXECUTIVE DEPARTMENT, PRODUCTION OF. *See* EXECUTIVE DEPARTMENTS, 35-38.

#### OHIO RIVER BRIDGES.

*See* NAVIGABLE WATERS, 148-158.

#### OKLAHOMA.

1. *National banks*.—Under existing legislation relating to the establishment of national banking associations, and in the present

condition of Oklahoma (being without a government and system of laws), such banking associations can not lawfully be authorized and established in the Territory known by that name. 19 Op. 315.

2. *Same*.—In view of the provisions of the act of May 2, 1890 (26 Stat. 81), entitled "An act to provide a temporary government for the Territory of Oklahoma," etc., there no longer exists any obstacle to the establishment of national-banking associations in the Indian Territory. 19 Op. 585.

3. *Sale of spirituous liquors not forbidden*.—The Indian title to the lands within the Territory known as Oklahoma having become extinguished, and the lands thrown open to settlement, that Territory has ceased to be "Indian country," and sections 2139 and 2140, Revised Statutes, are accordingly no longer applicable thereto; nor is the sale of spirituous liquors and beer in such Territory forbidden thereby. 19 Op. 306.

4. *Same*.—Yet, for reasons stated, the Internal-Revenue Department may decline to furnish special revenue stamps for the sale of intoxicating liquors within that Territory until Congress shall have time to consider the subject. *Ib*.

5. *Same*.—Such refusal may be based upon the fact that there are no counties nor legally organized towns whose limits are capable of definition, and therefore such license can not specifically define and describe known places of doing business as contemplated by sections 3240 and 3241, Revised Statutes. *Ib*.

6. *Same*. The internal-revenue laws should be enforced in the Territory of Oklahoma in the same manner and to the same extent that they are enforced in other parts of the Union, the act of May 2, 1890 (26 Stat. 81), having established an organized government within that Territory. 19 Op. 569.

7. When the legislature of Oklahoma Territory, at its first session, took a recess for one or more days on account of an approaching election: *Advised* that the period covered by the recess should be counted as part of the one hundred and twenty days limited for such session, by section 4 of the (organic) act of May 2, 1890 (26 Stat. 83). 19 Op. 682.

*See also* Arizona, 1-5.

8. *Surety companies*.—Process agents.—A surety company authorized by the act of August 13, 1894 (28 Stat. 279), to transact a

surety business, which has appointed an agent at Guthrie, Okla., upon whom all lawful process issued against it may be served, and has filed copies of such appointment at all places in that Territory where court is held, thereby consents to accept service upon such agent of a summons issued from any county in that Territory, and effectuates the purpose of section 2 of that act. 25 Op. 598.

9. *Same.*—Section 5 of that act does not so qualify section 2 thereof as to make the appointment of a process agent in the district only where the bond is returnable or filed a compliance with the statute. The purpose is also to require the appointment of an agent in the district where the contract is to be performed. *Ib.*

10. *Same.*—The Government can enforce a contract between it and a surety company in Oklahoma, although the company has not made the deposit required by the territorial act of Oklahoma of March 15, 1905. *Ib.*

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#### OLEOMARGARINE.

*See* FOOD PRODUCTS, 10.

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#### OPENING OF BIDS.

*See* CONTRACTS, 35, 43-45.

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#### OPINIONS.

*See* ATTORNEY-GENERAL; TREASURY DEPARTMENT, II, f.

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#### OPTION.

*See* SHILOH BATTLEFIELD.

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#### ORDNANCE.

*See* CONTRACTS, 140; NAVY, I, f; PATENTS, 9, 10, 14, 15; UNITED STATES, 58, 59.

#### OREGON.

While the Secretary of the Treasury has the power to locate the public building at Portland, Oreg., within the present limits of that city, yet it would be more in accord with the intent of the act of Congress of January 24, 1891 (26 Stat. 727), to locate the building in the limits as they existed at the time said act was passed. 20 Op. 320.

OREGON TERRITORY. *See* CLAIMS, I, 34.

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#### OSAGE INDIANS.

*See* CLAIMS, I, 31-33.

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#### OVERHEAD WIRES.

*See* DISTRICT OF COLUMBIA, 49.

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#### OVERPAYMENT.

OF ARMY OFFICERS. *See* ARMY, 168-176.

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#### OWNERSHIP.

OF PUBLIC BUILDINGS ERECTED ON PRIVATE LANDS. *See* UNITED STATES, 92-94.

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#### PAGO PAGO HARBOR.

*See* SAMOA.

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#### PANAMA.

1. **Exports to Panama or Colon for Canal Zone.**—The effect of the order of the President of December 3, 1904, is to prevent the direct shipment of goods, wares, and merchandise into the Canal Zone of Panama; and distilled spirits withdrawn for shipment to Panama or Colon, although ultimately to go to the Canal Zone, are withdrawn for shipment to



a foreign country within the letter and spirit of the statutes. 25 Op. 324.

**2. Panama Canal—Title.**—The United States will, upon the purchase of the rights, franchises, and property of the New Panama Canal Company of France in the Panama Canal, secure a good, valid, and unincumbered title thereto, provided the Colombian Government consents to such transfer. 24 Op. 144.

**3. Panama Canal—Authority of the President to make contracts for construction.**—The President is authorized under existing law to make contracts for the construction and completion of the Panama Canal in excess of the appropriation at present available, so long as such contracts do not involve the Government in the ultimate expenditure of moneys for its construction and completion in excess of the amount designated in section 5 of the act of June 28, 1902 (32 Stat. 483), limiting the total cost of the canal. 25 Op. 557.

**4. Same.**—The authority thus granted by the act of June 28, 1902, remains unaffected and unimpaired by the provision in the act of December 21, 1905 (34 Stat. 5), prohibiting the expenditure of any money for the construction of such canal "except in accordance with appropriations made by Congress." *Ib.*

**5. Same.**—The phrase "no money shall be expended except in accordance with appropriations made by Congress," as used in the act of 1905, means nothing more than that no money shall be expended in excess of appropriations made by Congress. *Ib.*

**6. Panama Canal—Expenses incident to project.**—The President is authorized by section 5 of the Atlantic and Pacific canal act of June 28, 1902 (32 Stat. 481, 483), to provide by proper order for carrying into effect certain recommendations of Admiral Walker, and direct the payment of expenses necessarily incurred in accomplishing the purposes of that act, to wit, the support of Major Black's party on the Isthmus, the maintenance of an office in Washington to supervise his work, receive his reports, preserve records, etc., of the old Isthmian Canal Commission, and the storage of certain machinery, boats, etc., at Greytown. 25 Op. 54.

**7. Panama Canal—Deposit of funds in bank—Authority of the President.**—Section 5 of the act of June 28, 1902 (32 Stat. 483), appropriating \$10,000,000 for use in the construction of

the Panama Canal, does not authorize the President to deposit \$1,500,000 of that sum with the International Banking Corporation of New York, upon the condition that the bank will maintain the new coinage of the Republic of Panama at its legal parity with gold, supply the Isthmian Canal Commission with said coinage, and sell foreign and domestic exchange at reasonable rates—a deposit upon such conditions not being an incident of the financial operations to be carried on for the Government by the bank, but a distinct deposit of public money with a private bank for its own purposes. 25 Op. 484.

**8. Same.**—The President may enter into a similar contract with that company which would not involve the deposit of the money in question, but provide for payment, out of the sum appropriated, for the services which it is desired to have the bank perform. *Ib.*

**9. Panama Canal—Eight-hour law.**—The act of August 1, 1892 (27 Stat. 340), which limits and restricts to eight hours the daily service of laborers and mechanics employed by the Government of the United States or by any contractor or subcontractor upon the public works of the United States, applies to the employment of laborers and mechanics in the construction of the Panama Canal. 25 Op. 441.

**10. Same.**—That act, however, does not apply to the office force of the Isthmian Canal Commission stationed on the Isthmus of Panama, or to any of the employees of the Government who are not within the ordinary meaning of the words "laborers and mechanics." *Ib.*

**11. Same.**—The scope of the act is not limited by the territorial jurisdiction of Congress, but is coextensive with the subject-matter to which it was directed, to wit, the conduct of officers and agents of the United States in respect to the hours of labor of mechanics and laborers upon all public works of the United States. *Ib.*

**12. Same.**—Congress may fix the hours of labor upon all the works of the United States, wherever conducted, and make the law binding upon the officers of the United States and, through the agency of contracts, upon all contractors with the United States. *Ib.*

**13. Panama Canal—Contract labor—Involuntary servitude.**—A person held to labor or

service against his will, although he may have voluntarily contracted to submit himself to such control, is in a condition of involuntary servitude within the meaning of the thirteenth amendment to the Constitution. 25 Op. 474.

14. *Same.*—A laborer may agree to reside in a specified place, to perform only specific work, and to remain in a territory a specified time; but if compelled by force or law to comply with his obligations in these respects he, while thus under compulsion, is in a condition of involuntary servitude. *Ib.*

15. **Panama Railroad—Eight-hour law.**—The words “laborers and mechanics” as used in the eight-hour law of August 1, 1892 (27 Stat. 340), apply to all persons who may fairly come within the description of laborers and mechanics, whether they are paid by the year, by the month, or by the day. 25 Op. 465.

16. *Same.*—The above named act does not apply to laborers and mechanics in the employment of the Panama Railroad and Steamship Line, such persons being employed by the corporation and not by the United States. *Ib.*

17. **Panama Railroad—Power of the President to redeem bonds.**—The President has the power under section 5 of the act of June 28, 1902 (32 Stat. 483), providing for the construction of a canal connecting the waters of the Atlantic and Pacific oceans, to turn over to the Panama Railroad Company money sufficient to redeem certain bonds of that company, recently sold to raise money to pay for necessary improvements to the railroad. 25 Op. 550.

*See also* ISTHMIAN CANAL COMMISSION.

#### PAN-AMERICAN CONFERENCE.

1. **Counsel for delegates of the United States—Appointment—Penalty.**—The acceptance of an appointment as counsel for the delegates of the United States to the Pan-American Conference by a person who is engaged as an attorney in prosecuting claims before the Spanish Treaty Claims Commission would not subject such person to the penalties prescribed by section 5498, Revised Statutes. The penalties therein prescribed are for the prosecution of claims against the United

States by one who holds an office or place such as is described in that section. 23 Op. 533.

2. *Same.*—While the appointee would be subject to no penalty for accepting such appointment, yet if, while holding the place of such counsel, he should engage in the prosecution of claims against the United States before that Commission, or other tribunal, he would be subject to the penalties therein prescribed. *Ib.*

3. *Same.*—While such person would not be an officer, as that term is there used, he would come within the description of a person holding a place of trust or profit under the Government of the United States. *Ib.*

4. *Same—Services of, not “clerical” in character.*—The acts of June 6, 1900 (31 Stat. 437), and March 3, 1901 (31 Stat. 1179), making appropriation for the “expenses of the delegates to the proposed international conference, and for incidental clerical assistance,” do not contemplate nor provide for the payment of the expenses or compensation of counsel for the delegates to that conference, the services to be performed by such counsel not being “clerical” in character. *Ib.*

#### PAPERS.

DISPOSAL OF PAPERS. *See* TREASURY DEPARTMENT, 19.

PRODUCTION OF RECORDS. *See* CIVIL SERVICE, II, d; EXECUTIVE DEPARTMENTS, 36-38.

#### PASS A LOUTRE.

*See* NAVIGABLE WATERS, 70-71.

#### PARDON.

1. **Of a naval officer—Restoration of lost numbers.**—C., a lieutenant-commander in the Navy, was sentenced by a court-martial to suspension for one year, and to retain his then present number on the list of lieutenant-commanders for that time. The sentence having been executed, he applied to be restored to the number on said list which he

thereby lost: *Held*, that the restoration could not be effected by the President otherwise than by a pardon. 17 Op. 31.

2. *Same*.—The punishment imposed (loss of numbers) being a continuing one, is still subject to the pardoning power, which, when exercised, would have the effect to restore the officer to his former rank according to the date of his commission. *Ib*.

ANNULMENT OF SENTENCE. *See* COURTS-MARTIAL, IV.

3. Remission of sentence of court-martial.—Where a lieutenant was sentenced by a court-martial to reduction of rank in his grade, and the sentence was carried into effect, and later the department commander remitted the sentence under the power to pardon conferred by article 112 of the Articles of War: *Held* that the punishment imposed by the sentence being a continuing one, the sentence could be remitted by the pardoning power, and that the authority exercised by the department commander was in conformity to law. 17 Op. 656.

4. An officer who is authorized to order a general court-martial has no power under the one hundred and twelfth article of war to pardon or mitigate the punishment adjudged by it after confirmation by him of the sentence. 19 Op. 106.

5. A convicted deserter from the Army, undergoing sentence, must become the recipient of Executive clemency and must make application for reenlistment before the question of the effect of the President's pardon upon his right to reenlist can arise. 21 Op. 568.

6. Effect of President's pardon as regards reenlistment.—A recruiting officer has the right to reject a candidate for reenlistment in the Army whose service during his previous term was not honest and faithful, notwithstanding the President's pardon of the offense. 22 Op. 36.

7. *Same*.—While the President's pardon restores such a criminal to his legal rights and fully relieves him of the disabilities legally attaching to his conviction, it does not destroy an existing fact that his service was not faithful and honest. *Ib*.

8. *Same*.—A person convicted of desertion from the military service and afterwards pardoned by the President, would be restored by reason of the pardon to all the rights and privi-

leges of a citizen which he had anterior to such conviction. *Ib*.

9.—Congress has no power to abridge the effect of the President's pardon. *Ib*.

10. *Same*.—The pardoning power of the President is not subject to legislative control. 20 Op. 330.

11. *Same*.—The President has the constitutional power, without Congressional authority, to issue a general pardon or amnesty to classes of foreigners. 20 Op. 330, 368.

12. Pardon of persons who engaged in the rebellion.—Holding office.—Section 3 of the fourteenth amendment of the Constitution, which provides that no person who having previously taken the oath to support the Constitution of the United States shall have engaged in insurrection or rebellion against the same shall hold any office, civil or military, under the United States or under any State, is not applicable to an officer who had received a full pardon from the President for such offense prior to the adoption of that amendment. 18 Op. 149.

13. *Same*.—A person pardoned becomes "a new man," endowed with "a new credit and capacity;" his guilt has been "blotted out," and he becomes "as innocent as if he had never committed the offense." *Ib*.

14. *Same*.—L., having been commissioned a lieutenant in the United States Army, and taken an oath as such officer to support the Constitution of the United States, afterwards bore arms against the United States in the war of the rebellion, but on the 6th of February, 1867, received a full pardon from the President for the part he had taken therein: *Held* that the fourteenth amendment of the Constitution (sec. 3), which did not take effect until more than a year after such pardon was granted, does not operate to exclude L. from holding office under the United States. *Ib*.

15. *Same*.—If, as claimed, a cadet upon entering the Naval Academy, took no oath to support the Constitution of the United States, and after a year's service joined the rebellion, the President's proclamation of December 25, 1868, which embraced all cases not within the third section of the fourteenth amendment, necessarily restored him to his lost civil rights. 18 Op. 180.

16. *Same*.—If he did take an oath in effect, although not in terms, to support the Consti-

tution, he may have been entirely rehabilitated by the President's proclamation of amnesty of the 7th September, 1867; in which case the rights thus restored would continue in full force notwithstanding the fourteenth amendment, subsequently adopted. *Id.* (See 18 Op. 149.)

17. **For contempt of court.**—The President has power to grant a pardon to a prisoner undergoing punishment for a contempt of court. 19 Op. 476.

18. **Polygamy.**—The President has the constitutional power, without Congressional action, to issue a general pardon or amnesty to classes of offenders, including persons in Utah guilty of polygamy and unlawful cohabitation, etc. 20 Op. 330.

19. **Same.**—The President's constitutional pardoning power covers the case of the offense in Utah of unlawful cohabitation. This power is absolute, and not subject of legislative control. 20 Op. 668.

20. **Misdemeanor.**—If the action of the President on an application for pardon of an offense styled by the laws of the United States a misdemeanor, depends simply on the question of necessity for pardon, such necessity exists, unless the applicant is to be prevented from freely changing his residence under penalty of losing his rights of citizenship thereby, for the reason that in some States a person convicted of a misdemeanor loses his right to vote, to sit as juror, etc. 21 Op. 242.

21. **A pardon is a gracious act of mercy resting on any ground which the Executive may regard as sufficient to call for its exercise.** 20 Op. 332.

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#### PARIS EXPOSITION OF 1900.

See EXPOSITIONS AND FAIRS, III.

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#### PARKS AND RESERVATIONS.

See DISTRICT OF COLUMBIA, V; RESERVATIONS AND PARKS.

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#### PART PAYMENTS.

See CONTRACTS, VI, b.; Navy VIII, 191.

#### PARTNERSHIP.

1. If a power of attorney signed by the individual members of a firm as well as in the firm name confers explicit authority upon one of its members to use the partnership name in signing entries and executing certain customs bonds, acts performed in compliance with such authorization are obligatory upon the firm. 20 Op. 311.

2. The common law rule that one partner has no implied authority to bind his partners by executing a bond in the firm name, is well established and refers to an implied power without specific authority. *Id.*

3. Fraud committed by one member of a partnership in a transaction which he is conducting on behalf of the firm is regarded by the law as fraud committed by the firm, although it be unsuccessful, and although it was the intention of the partner to cheat his own firm as well as the other party. 21 Op. 90.

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#### PASSED ASSISTANT SURGEON.

See NAVY, 86, 87; MARINE-HOSPITAL SERVICE, 1.

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#### PASSENGER TRANSPORTATION.

IN FOREIGN VESSELS. See SHIPPING, III, 44-47, 71-75.

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#### PASSENGER VESSELS.

See VESSELS.

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#### PASSENGERS.

TAX ON. See IMMIGRATION, V; SHIPPING, 45-48, 72-76.

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#### PASSPORT.

1. The provisions of sections 4075 and 4076, Revised Statutes, which confer upon the Secretary of State the authority to issue

passports to citizens of the United States, are not in terms mandatory, and that officer may, in his discretion, either grant or withhold a passport as the public interests may require. 23 Op. 509.

2. Certain papers issued by the mayor of Savannah, Ga., and also by a notary public at Cedar Keys, Fla., containing the essentials of a passport, and intended to be used in traveling in a foreign country, are a violation of section 4078, Revised Statutes. 17 Op. 674.

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#### PATENT OFFICE.

See DEPARTMENT OF THE INTERIOR, III, a.

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#### PATENTED ARTICLES.

PURCHASE OF BOND OF INDEMNITY. See UNITED STATES, IX.

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#### PATENTS.

1. The privilege of filing caveats in the Patent Office preliminary to applications for patents is limited by section 4902, Revised Statutes, to citizens of the United States, and aliens who have resided therein one year and declared their intention to become citizens. 19 Op. 273.

2. Same.—This privilege does not extend to the subjects and citizens of nations parties to the convention entered into between the United States and certain other nations, proclaimed by the President on June, 9, 1887, for the reason that article two thereof is not self-executing and Congress has passed no law for its execution. *Ib.*

3. Same.—A treaty of the United States is the supreme law of the land, but there is a class of treaties which, without legislation, does not become self-executing as a rule of municipal law. *Ib.* (276).

4. Application for renewal—Statutory limitation.—Where letters patent were allowed on an original application, December 9, 1887, but the final fee was not paid as required by statute; and the same were again allowed on

a renewed application, under section 4897, Revised Statutes, December 4, 1889; and payment of final fee as required not having been made on the last allowance, a second application for renewal, under said section, was filed June 7, 1890: *Advised* that the applicant is not entitled to an allowance of letters patent on such second application, the statutory limitation (two years) imposed by said section having attached before the filing thereof. 19 Op. 698.

5. Goods smuggled into the United States may be seized and sold by a collector of customs, although protected by patents. 21 Op. 72.

6. Liability of United States for use of article patented by officer or employee of the Government.—A naval officer or employee of the Government at a navy-yard, who has invented an article for use in the naval service and patented it, if the invention does not relate to a matter as to which he was specially directed to experiment with a view to suggest improvements, is entitled to compensation from the Government for the use of such article, in addition to his salary or pay as such officer or employee. 19 Op. 407.

7. Same.—It makes no difference that the invention consists of an improvement upon an article already patented, and that when the improvement was patented the officer or employee was assigned to the duty of superintending for the Government the manufacture of the article improved upon. *Ib.*

8. Same.—The Secretary of the Navy can not legally contract with the patentee for the purchase of his patent, or for a license to use it, under an appropriation limited to the purchase of material and the employment of labor in the manufacture of such article out of it. *Ib.*

9. Purchase of patent rights and improvements in ordnance from an ensign of the Navy.—The Secretary of the Navy may lawfully contract with an ensign of the Navy for the purchase of patent rights and improvements in "B. L. R. ordnance" for use in the Navy, when the ensign was not employed to make experiments, but paid the expenses of obtaining letters patent, and when no expense was authorized or facility furnished by the Bureau of Ordnance to aid him in making or perfecting his invention. 20 Op. 329.

10. Same.—Section 3721, Revised Statutes, and not section 3718, applies to the case. *Ib.*

11. A contractor manufacturing certain supplies for the United States, under an alleged infringing patent, may be restrained by injunction from manufacturing or using such articles prior to a determination of the question of infringement by the courts. 21 Op. 96.

12. *Same.*—No injunction or action for damages for the infringement of a patent will lie against the Government. 21 Op. 96.

13. *Same.*—Where loss may result to the Government or its officers from the use by contractors of patented inventions, or other property of third persons, a board of indemnity should be required. 21 Op. 97.

14. The right of the United States in the manufacture of a patented breech mechanism under a license which reads, "to manufacture \* \* \* guns containing the patented improvements and to use and sell the same," is confined to the right to manufacture in its own shops, and does not include contracting with other parties therefor. 22 Op. 10.

15. *Same.*—From the right to use a patent the right to make or have made may be implied; but this implication can only be made when the right to use is unrestricted. *Ib.*

16. *Philippine Islands.*—The Attorney-General declines to answer the question whether citizens of the Philippine Islands are entitled to the benefits of the patent laws of the United States, there being no case involving that question pending before the Department making the inquiry. 25 Op. 179.

*See also* LICENSES; PUBLIC LANDS, V.

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#### PAY.

*See* ARMY, II, d; NAVY, II, d.

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#### PAYMASTER.

*See* ARMY, II, 49-52; NAVY, I, 10; II, 107.

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#### PAYMASTER'S CLERKS.

*See* CIVIL SERVICE, IV, 113.

#### PAYMENT.

OF ACCRUED PENSIONS. *See* PENSIONS, I, e.

OF ADVERTISEMENTS. *See* EXECUTIVE DEPARTMENTS, 62.

OF ARMY TRANSPORTATION. *See* RAILROADS, IV.

OF AN AWARD. *See* ADMINISTRATION; DISTRICT OF COLUMBIA, XI.

OF UNITED STATES BONDS. *See* TREASURY DEPARTMENT, VI.

OF CLAIMS. *See* TREASURY DEPARTMENT, I, b; CLAIMS, I, g.

OF MONEYS DUE ON GOVERNMENT CONTRACTS. *See* CONTRACTS, VI, b; NAVY, VII.

OF DIRECT TAXES. *See* DIRECT TAXES.

OF DUTIES. *See* CUSTOMS LAW, V, a.

ON CONTRACTS FOR NAVAL VESSELS. *See* NAVY, VII.

ON RIVER AND HARBOR IMPROVEMENT CONTRACTS. *See* NAVIGABLE WATERS, II.

BY OR UNDER THE HEAD OF AN EXECUTIVE DEPARTMENT. *See* ATTORNEY-GENERAL, II, s; TREASURY DEPARTMENT, II, f.

THROUGH MISTAKE. *See* ARMY, I, c.

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#### PENAL BOND.

*See* CUSTOMS LAW, III, 73, 74.

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#### PENAL DUTIES.

*See* CUSTOMS LAW, IX, b.

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#### PENALTIES.

*See* CUSTOMS LAWS, IX; INTERNAL REVENUE, IV; CONTRACTS, V; PAN-AMERICAN CONFERENCE.

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#### PENALTY ENVELOPES.

*See* POSTAL SERVICE, VI.

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#### PENITENTIARIES.

1. Prisoners sentenced by a military court-martial to confinement in a United States penitentiary should be conducted thereto by the

proper officer of the War Department, and not be turned over to a United States marshal for delivery. 21 Op. 204.

2. **Washington State Penitentiary.**—In view of the fact that the State of Washington already has a penitentiary, the attention of Congress should be called to the matter before any further expenditure is made of money appropriated by the act of March 3, 1893 (27 Stat. 661), for the purpose of the creation of a penitentiary at Walla Walla in supposed conformity with the promise made in section 15 of the act of February 22, 1889 (25 Stat. 680). 21 Op. 352.

3. **Grant of lands in Colorado for penitentiary purposes.**—The provisions of section 9 of the act of March 3, 1875 (18 Stat. 474), granting certain sections of unappropriated public lands within the State of Colorado to the State for penitentiary purposes, to be selected and located by direction of the legislature with the approval of the President of the United States on or before a specified date, are not directory, as Congress had no right to give directions to the legislature of a State, but are in the nature of conditions precedent, and can only be given effect as conditions, and a failure by the designated authorities to select and locate the lands within the time named, renders the grant inoperative. After the expiration of said time the President is not authorized to approve a selection and location of said lands. 21 Op. 462.

## PENNSYLVANIA.

See CLAIMS, I, e.

## PENSION OFFICE.

See DEPARTMENT OF THE INTERIOR, III, b;  
PUBLIC BUILDINGS, 1.

## PENSIONS.

### I. Generally.

- a. *Administration of Pension Laws*, 1-7.
- b. *Application, Filing, Declaration*, 8-14.

- c. *Oaths—Fees*, 15-18.
- d. *Suspension*, 19-22.
- e. *Accrued Pensions, Sickness, and Burial Expenses*, 23-32.
- f. *Miscellaneous*, 33-34.

### II. Right to.

- a. *Officers on Retired List—Arrears*, 35-37.
- b. *Navy Pensions*, 38.
- c. *Widows and Children*, 39-45.
- d. *Dependent Parents*, 46.
- e. *By Special Act and Under General Law*, 47-52.
- f. *Miscellaneous*, 53-64.

### III. Money improperly paid—Recovery, 65-69.

### IV. Pension agents, 70-74.

#### I. Generally.

##### a. *Administration of Pension Laws.*

1. **Commissioner of Pensions.**—Duty to administer the pension laws.—It is not within the province of the accounting officers of the Treasury to construe the pension laws and give instructions to pension agents as to the payment of pensions. This properly belongs to the Commissioner of Pensions, whose duty it is, under the direction of the Secretary of the Interior, to administer these laws. 17 Op. 339.

2. **Same.**—There is no allusion in any of the pension laws to the accounting officers of the Treasury as having any authority to construe those laws, or to direct the pension agents as to the amount that shall be paid to any class of pensioners or to whom pensions shall be paid. This is matter for the supervision and instruction of the Commissioner. The certificate and his orders as to its payment are binding upon the Comptroller and Auditor. 17 Op. 340.

3. **The Commissioner of Pensions** is not invested with power to audit and adjust accounts for the last sickness and burial of deceased pensioners arising under section 4718, Revised Statutes. This power belongs solely to the proper accounting officers of the Treasury by virtue of section 236, Revised Statutes. 17 Op. 440.

Opinion of April 28, 1882 (17 Op. 339), distinguished. *Ib.*

4. The Attorney-General is not authorized to give to the Secretary of the Treasury his opinion as to the proper construction of a pension appropriation act, because the Treasury Department is bound to follow the rulings of the Department of the Interior in considering that act. 20 Op. 178.

5. Accounting officers of the Treasury no authority to disallow—Double pensions.—A person who for a time drew two pensions, one as the widow of a soldier in the war of the rebellion and the other as the widow of a soldier in the war of 1812, was required to make an election, and having elected to hold the first-mentioned certificate, the Commissioner of Pensions ordered the amount which had been paid to her upon the other certificate to be withheld in installments of \$6 per month from payments thereafter, and issued an order to the pension agent accordingly: *Advised* that the order made in this case, being within the general jurisdiction of the Commissioner, is obligatory on the pension agent, and that the accounting officers of the Treasury have no power to disallow payments made by the agent pursuant thereto. 19 Op. 214.

6. Same.—It is not within the province of the accounting officers of the Treasury, upon learning of any order made by the Commissioner of Pensions to a pension agent for the payment of pensions, to notify such agent of what their decision will be upon his account when rendered. *Ib.*

7. Overpayment—Withholding amount due.—In the case stated, the whole of the monthly pension under the certificate which the pensioner elected to hold should be withheld until the amounts so withheld shall equal the sum paid the pensioner under the other certificate. *Ib.*

b. Application—Filing—Declaration.

8. Application—filing.—The provision in section 4713, Revised Statutes, declaring that where an application for pension shall not have been filed "within three years of the termination of a pension previously granted on account of the service and death of the same person, the pension shall commence from the date of filing by the party prosecuting the claim, the last paper requisite to establish the same," is applicable to half-pay

pensions allowable under section 4725, Revised Statutes. 17 Op. 221.

9. Declaration—Limitation as to date of filing.—The proviso in section 4714, Revised Statutes, which authorizes the acceptance of a declaration to exempt a pension claim from the limitation as to date of filing provided by section 4709, a section which has been repealed, is to be construed as applicable to the new limitation relating thereto prescribed by section 2 of the act of March 3, 1879 (20 Stat. 469); and a declaration made in accordance therewith may be accepted to exempt a claim from such limitation. 17 Op. 355.

10. Same.—Section 2 of the act of 1879 is a reenactment of the provisions of section 4709, Revised Statutes, with some modification thereof. *Ib.*

11. Declaration—How made.—Declarations of pension claimants must be made before a court of record, or before some officer thereof having custody of its seal. 17 Op. 510.

12. Same—Court of record—How distinguished.—The power to fine and imprison is not in this country a distinguishing mark of a court of record, but the enrolling or recording of their acts and proceedings is; and such court must have a seal by which its acts and proceedings are authenticated and proved. *Ib.*

13. Application by letter—Arrears.—Where an application for a pension was made by letter, sufficient to identify the claimant and the claim, and was placed on file as a part of the record of the case before July 1, 1880, and the claim was not abandoned, but delay in its prosecution satisfactorily accounted for by sickness: *Advised* that (the claim being subsequently established and allowed) such application by letter is sufficient to warrant the granting of arrears of pension provided for by section 2 of the act of March 3, 1879 (20 Stat. 470). 19 Op. 190.

14. Same—Form of application.—"An application is the first regular substantial step taken by a claimant to obtain a pension. In the administration of the pension laws literal adherence to form or the strict pleading of the courts of law is not required. If the claimant is identified, and the time and place of his service and the injury or disease which constitute the ground of his claim are substantially set forth, the form is immaterial. Substance and merit in the application are controlling. The



original application may be only sufficient to identify the claim and claimant, and will yet be a valid application, for it is subject to amendment for defective statements." 19 Op. 191.

c. *Oaths—Fees.*

15. *Oaths administered free of charge.*—The act of June 7, 1888 (25 Stat. 174), which provided for the administering of oaths to pensioners free of charge, applies only to the officers authorized to administer oaths at the time of the passage of that act. 22 Op. 86.

16. *Same.*—United States commissioners are not required to administer oaths to pensioners and their witnesses in the execution of pension vouchers free of charge, the fee for which service is ten cents. *Ib.*

17. *The fees of witnesses subpoenaed under section 184, Revised Statutes, on application of the Pension Bureau, to testify before a United States commissioner, and also the fees of the commissioner by whom their testimony is taken, may properly be allowed out of the judiciary fund (21 Stat. 454).* The former should be paid by the United States marshal of the district on the certificate or order of the commissioner; the latter, as in ordinary course, on settlement of the commissioner's accounts at the Treasury. 17 Op. 247.

18. *Pension agents—Fees for forwarding claim.*—The provision of section 4769, Revised Statutes, authorizing pension agents to deduct from the fees of attorneys in each pension case 30 cents, in payment of the services of the former for forwarding the same, is repealed by the act of June 14, 1878 (20 Stat. 112). 18 Op. 251.

d. *Suspension.*

19. *Suspension without notice prohibited.*—The urgent deficiency act of December 21, 1893 (28 Stat. 16, 18), prohibits a suspension, without notice, of payments under forged or fraudulent pensions and prohibits further suspension of payments under pensions theretofore ordered to be suspended. 20 Op. 735.

20. *At the expiration of the statutory notice, however, the Commissioner of Pensions may decide the case and stop payment of the pension without precluding himself from thereafter reopening the case at the request of the pensioner when justice requires.* *Ib.*

21. *Suspension is a continuing act.* *Ib.*

22. "The act of 1893 clearly applies to every certificate that has been lawfully granted by the Pension Office, whether the evidencé upon which the office acted was complete or incomplete, honest, fraudulent, or forged. Such certificate may still, of course, be canceled upon charges made, but until the thirty days' notice is given, the evidence received, and a decision reached, the money must continue to be paid, even though the crime has been confessed and the criminal may be already serving his term of sentence. In fact, the statute practically abolishes the right to suspend payments *pendente lite* in these cases." 20 Op. 736.

e. *Accrued Pensions—Sickness and Burial Expenses.*

23. *Accrued pensions.*—The term "accrued pensions," as used in section 4718, Revised Statutes, means the amount of money *unpaid* by the Government to which a pensioner, or a person who had a valid claim for pension pending, was entitled at the time of his death. 19 Op. 1.

24. *Check not cashed or transferred not payment.*—The receipt by a pensioner of a check for the amount due him on his pension, which was indorsed but not transferred by him in his life-time, is not *payment*. *Ib.*

25. *Payment.*—The amount thus due is accordingly "accrued pension," and is payable to those only who are entitled thereto under such section. *Ib.*

26. *Duty imposed by section 4718, Revised Statutes.*—"Section 4718, Revised Statutes, imposes upon the officers of the Government the obligation to neither make nor allow to be made any payment of the 'accrued pension' to the executors or administrators of the decedent for the general payment of debts or distribution, with the possible single exception that if they have borne the necessary expenses of his last sickness and burial and he shall have died without sufficient funds to reimburse them, so much of the accrued pension may be paid them as they shall have paid for those purposes. In no event can they receive any part of the 'accrued pension' merely as the legal representatives of the decedent." 19 Op. 2.

27. "Unless, then, the pension was paid to the decedent in his life-time and became a part of his general assets, it can not pass to its legal

representatives so as to be subjected to the payment of the debts of the decedent." *Ib.*

28. **Accrued pensions.**—The proviso in the act of March 1, 1889 (25 Stat. 782), authorizing payment to a deceased pensioner's legal representatives, in certain contingencies, of the accrued pension due on his pension certificate at the time of his death, is to be construed as applicable to all outstanding pension certificates, whether issued before or since the passage of the act, but the pensioner must have died since the passage of that act to entitle his legal representatives to claim such accrued pension. 19 Op. 359.

29. **Sickness and burial expenses.**—The Commissioner of Pensions has no power to audit and adjust accounts for the last sickness and burial of deceased pensioners arising under section 4718, Revised Statutes. This power belongs solely to the proper accounting officer of the Treasury by virtue of section 236, Revised Statutes. 17 Op. 440.

30. **Same.**—There is no ground whatever for holding that section 4718 was intended to restrict or qualify the declaration contained in section 236, that all demands and accounts *whatever* against the Government shall be audited and adjusted in the Treasury. *Ib.*

31. **Accrued pension—Burial expenses of deceased pensioner.**—The word "person" as used in the act of March 2, 1895 (28 Stat. 964), includes a municipal corporation, and authorizes the payment by the Secretary of the Treasury, from the accrued pension of a deceased pensioner, of such sum as may be necessary to reimburse a municipal corporation for the expenses it incurred during the last sickness and for the burial of a deceased pensioner who died not leaving sufficient assets to meet such expenses. 23 Op. 428.

32. **Accrued money benefits due deceased beneficiary—Naval pension fund.**—There is no authority of law for the payment to the personal representatives of a deceased beneficiary of money benefits which may have accrued under sections 4756 and 4757, Revised Statutes, between the date of the last quarterly payment and the date of death; nor may such money be paid to the Naval Home in cases where the beneficiary has been cared for and subsisted by that institution between the date of the last quarterly payment and the date of death. 25 Op. 85.

See also II, 39; and TREASURY DEPARTMENT, 131, 132.

\* f. *Miscellaneous.*

33. **Permanent disability.**—A disability may properly be said to be permanent when it appears to be chronic or of indefinite future duration. 21 Op. 287.

34. **Same—Termination.**—The granting of a pension for "permanent specific disability" does not necessarily imply an adjudication that the disability is one which can not terminate. *Ib.*

II. Right to.

a. *Officers on Retired List.*

35. **Can not draw both pension and pay.**—In view of long established departmental practice, the provision of section 4724 of the Revised Statutes "that no person in the Army, Navy, or Marine Corps shall be allowed to draw both a pension as an invalid and the pay of his rank or station in the service" should not be held applicable to an officer upon the retired list prior to August 29, 1890. 21 Op. 408.

36. **Same—Arrears.**—Under the pension appropriation acts of August 20, 1890 (26 Stat. 370), and March 3, 1891 (26 Stat. 1081), no pension moneys can be drawn by retired officers of the Army, Navy, or Marine Corps after the date of the former act, but these two statutes are not to be given a retrospective effect so as to cut off arrears already due. *Ib.*

37. **Same—Not entitled to arrears.**—A retired officer of the Army is not entitled to draw an invalid pension or arrears of pensions. (Opinion of Sept. 11, 1886, 21 Op. 408, reversed.) 21 Op. 453.

b. *Navy Pensions.*

38. **Officers or seamen of revenue cutters.**—The revenue cutters employed in carrying out the order issued by President Lincoln to the Secretary of the Treasury, dated June 14, 1863, were, while so employed, cooperating with the Navy by order of the President; and if any of the officers or seamen thereof, during such employment, were wounded or disabled in the discharge of their duty, they became entitled to be placed on the Navy pension list at the same rate of pension and under

the same regulations and restrictions as are provided by law for the officers and seamen of the Navy. 19 Op. 505.

*See also* 32.

c. *Widows and Children.*

39. **Daughter—Mother deceased after daughter attained age of sixteen.**—T. died while his application for pension was pending, leaving a widow and a daughter under 16 years of age; the mother died after the daughter attained the age of 16 years; and subsequently the pension was allowed and a certificate therefor issued: *Held* that under section 4718, Revised Statutes, the daughter is entitled to the pension which had accrued up to the death of the father. 17 Op. 190.

40. **Same.**—"The purpose of the statute was to give the accrued pension to the widow or the child; and in my opinion, at the death of the father, each acquired a distinct contingent interest; the widow's being contingent on her survival until allowance and payment, the child's being contingent on the death of the mother prior to, and its own survival until, payment." *Ib.*

41. **Surviving child of pensioner, widow dead.**—Under section 4702, Revised Statutes, the surviving child of a pensioner (the widow and other children being dead) is entitled to the whole of the pension to which the father would be entitled were he living. 17 Op. 339.

42. **Right of children.**—"His child or children,' one or many, 'shall be entitled.' It is clear that the whole is given to the offspring of the father as a class. If there is more than one child, they have a joint estate, so to speak, in the pension. The statute disposes of the whole. No part of it reverts or falls back to the Government until the last child arrives at the age of 16 years or until his death before reaching that age." *Ib.*

43. **A widow's pension, provided for by section 4702, Revised Statutes, is limited to the amount given for "total disability" by section 4695, Revised Statutes.** 18 Op. 39.

44. **The claim of Mrs. Burnett for a pension, as widow, considered in connection with the acts of June 18, 1874 (18 Stat. 78), and June 16, 1880 (21 Stat. 281), and held that those acts did not change or increase her rights, which are still governed, as to the amount of the pension to which she is entitled, by section 4695, Revised Statutes.** 18 Op. 73.

45. "The law clearly contemplates that the widow and children, as provided by the statute, shall be the beneficiaries and not the general creditors of the pensioner, and unless the payment has been legally received by the pensioner, it is incumbent on those intrusted with the administration of the law neither to make nor allow payment to be made to any other person." 19 Op. 5.

d. *Dependent Parents.*

46. The first section of the act of June 27, 1890 (26 Stat. 182), entitled "An act granting pensions to soldiers and sailors who are incapacitated for the performance of manual labor," etc., is to be regarded as an amendment of section 4707, Revised Statutes; and, so regarded, the word "soldier" employed therein should be construed to comprehend also sailor and marine—the term being used as a short expression to embrace all the persons under section 4707 whose death entitled their parents to a pension. 19 Op. 586.

*See also* 53.

e. *By Special Act and Under General Laws.*

47. **Pensioners who were entitled but had not applied—General Burnett.**—Pensioners who, under the general law, section 4698 Revised Statutes, were entitled to receive \$31.25 per month, and consequently were entitled under the act of June 18, 1874 (18 Stat. 74), to an increase to \$50 per month, but who had not applied therefor at the date of the passage of the act of June 16, 1880 (21 Stat. 281), are entitled to \$72 per month under the latter act. 17 Op. 327.

48. **Same.**—The intent and spirit of the pension act of June 16, 1880, is that those soldiers and sailors whose present right it was at the time of its passage to demand and receive a pension of \$50 a month under the law of 1874 should have the same increased to \$72 per month. *Ib.*

49. **Same.**—The words "now receiving" in Section 1 of the act of June 16, 1880 (21 Stat. 281), should be construed to mean now entitled to receive. *Ib.*

50. **General Burnett's pension.**—Rates of pension which should be allowed General Burnett under the general laws of March 3, 1873, June 18, 1879, and June 16, 1880, and under the special act of March 3, 1879, stated;

and advised that two pension certificates be issued—one under the general law of June 16, 1880, the other under the special act of March 3, 1879. 17 Op. 401.

51. *Same.*—Where a pensioner was entitled to, though not actually receiving, a pension of \$50 a month under a general law, and while so entitled a special act was passed giving him another pension: *Held* that his right under the general law did not cease or become merged in that granted by the special act. 17 Op. 415.

52. *Same.*—Section 4715 Revised Statutes not applicable.—“Under the title ‘Pensions,’ as enacted in 1878, nothing can be so construed as to allow more than one pension at the same time to the same person. But subsequently, Congress having the power, stepping beyond the rule prescribed in section 4715, by a separate, independent law gives to a pensioner already entitled to a pension of \$50 another pension of the same amount. Section 4715 has no application to a case of this kind.” 17 Op. 416.

f. *Miscellaneous.*

53. Where a contract surgeon went aboard a steamer to proceed to the place to which he had been ordered, but before the departure of the boat, he became sick, and was removed to a hospital, where he died in a few days of typhoid fever, leaving a dependent mother, but no widow or child: *Held* that, under the provisions of sections 4692, 4693, and 4707, Revised Statutes, the dependent mother is entitled to be enrolled as a pensioner, on the ground that the deceased, when taken down with sickness, was “*in transitu*” under orders. 17 Op. 457.

54. *Same.*—When an officer is ordered to go to a given point for duty and has set about his preparations to go, his transitus has begun. *Ib.*

55. The professors of the Military Academy at West Point are commissioned officers of the Army, whose pay and allowances are assimilated to those of a lieutenant-colonel and a colonel; and in case of such disability as is described in section 4693, Revised Statutes, they are entitled to pensions at the same rate with officers of the rank of lieutenant-colonel. 17 Op. 359.

56. Volunteer not actually mustered but engaged in the service under an officer of the United States.—A person who enlisted in the Forty-seventh Regiment of the Pennsylvania

Militia pursuant to the President’s proclamation for volunteers to serve for six months, which regiment was not actually mustered into service of the United States, but was engaged in the service of the United States under the command of an officer of the United States Army, has a pensionable status within the first subdivision of section 4693, Revised Statutes. 20 Op. 322.

57. Injury received not in line of duty.—Consideration of legal principles applicable to the case of a claim for pension, where the injury followed the use of abusive language of the claimant toward his assailant. 17 Op. 172.

58. *Same.*—If the assault on the claimant was brought on by his own misconduct, he can not be said to have been disabled while in the line of duty, and is not entitled to a pension. *Ib.*

59. *Same.*—The phrase “in the line of duty,” has been uniformly used in the statutes in defining the right to pensions. *Ib.*

60. *Same.*—The question of remote or proximate cause, though frequently treated as question of law, is in reality one of fact. *Ib.*

61. *Same.*—If there did not intervene between the contact and the injury an adequate and sufficient cause, for which claimant was responsible, he is entitled to pension. *Ib.*

62. *Same.*—Claimant can not be said to be entitled to a pension unless the provocation he gave was such as to acquit the assailant in a court of law; nor on the other hand does the slightest departure from the rules of proper conduct, followed by an injury, preclude allowance of his claim. *Ib.*

63. *Same.*—Burden of proof.—A wound is such an improbable effect of duty in the service as to throw upon the applicant the burden of showing that his misconduct was not the cause of the injury, but if this is done with reasonable certainty the claim should be allowed. *Ib.*

64. *Same.*—The Attorney-General’s advisory powers do not extend to an examination of evidence to ascertain what is established by a preponderance of testimony. *Ib.*

III. Payment—Money Improperly Paid—  
Recovery.

65. It is the duty of the Commissioner of Pensions, in a case where money has been

paid on a pension certificate alleged to have been fraudulently obtained, to furnish the Solicitor of the Treasury with all the material facts and evidence in the case at his command, or which he can obtain, including facts and evidence with regard to certificates of deposit and mortgages that have been made and purchased with part of such money, and in every way in his power to aid in the prosecution of such suits as may be brought. 19 Op. 210.

66. Where money was recaptured from the wife of the prisoner and he was afterwards acquitted.—Part of the money having been recaptured from the wives of the parties charged, to wit, the prisoner and his accomplice, and they having been acquitted by a United States court of perjury for making false affidavits to obtain the pension: *Held* (1) that the officer making such seizure acted at his own peril; (2) that no provision of law exists by which the Government can indemnify such officer in case he should be found, on a judicial trial, to have made a wrongful caption; (3) that retention of the money by any future officer continues subject to the same conditions, and does not effect a legal release from responsibility of the prior officer who made the caption; (4) that the officer would be justified in returning the money to the persons from whom it was taken, in which event the Commissioner of Pensions should at once report all the facts and evidence relating thereto to the Secretary of the Treasury. *Ib.*

67. Possession is *prima facie* evidence of right of property, which would have to be overthrown by evidence of fraud in obtaining the certificate, and fraud is not to be presumed, but must be clearly proven. *Ib.*

68. The dropping of the name of the alleged pensioner from the rolls by the Secretary of the Interior, while conclusive as to future payments on the certificate, would have no retroactive effect in a judicial trial as to the right of the prisoner to such money as had been paid. *Ib.*

69. The verdict of acquittal in the prosecution for perjury does not establish the right of the pensioner to the money, nor could the proceedings in that case be legally received in evidence in a civil suit. *Ib.*

*See also*, 71-73.

#### IV. Pension Agents.

70. Bond.—The provision in the act of June 30, 1890 (26 Stat. 187), making appropriations for the payment of invalid and other pensions, etc., which requires a new bond "from all pension agents now in office," is mandatory, and applies to all pension agents then in office, without any exception whatever. 19 Op. 581.

71. Instructions to pension agents.—It is not within the province of the accounting officers of the Treasury to construe the pension laws and give instructions to pension agents as to the payment of pensions. This properly belongs to the Commissioner of Pensions, whose duty it is, under the direction of the Secretary of the Interior, to administer these laws. 17 Op. 339.

72. The order of the Commissioner of Pensions directing a pension agent to withhold from payment installments of a pension, when the pensioner had been drawing two pensions, was within the general jurisdiction of the Commissioner, and is obligatory on the pension agent, and the accounting officers of the Treasury have no power to disallow payments made by the agent pursuant thereto. 19 Op. 214.

73. Same.—It is not within the province of the accounting officers of the Treasury, upon learning of any order made by the Commissioner of Pensions to a pension agent for the payment of pensions, to notify such agent of what their decision will be upon his account when rendered. *Ib.*

74. Fees of forwarding pension certificate.—The provision of section 4769, Revised Statutes, authorizing pension agents to deduct from the fees of attorneys in each pension case 30 cents, in payment of the services of the former for forwarding the same, is repealed by the act of June 14, 1878 (20 Stat. 112). 18 Op. 251.

ARTIFICIAL LIMBS. *See* ARTIFICIAL LIMBS.

HALF-PAY PENSIONS. *See* 8.

DISABILITY INCURRED IN THE LINE OF DUTY. *See* 57-63.

DOUBLE PENSION. *See* 5-7.

OFFICERS AND SEAMEN OF THE REVENUE-CUTTER SERVICE. *See* 38.

OFFICER WHO WAS TAKEN SICK ON STEAMER BEFORE IT STARTED, WAS REMOVED TO HOSPITAL, AND DIED THERE. *See* 53-54.  
 PENSION EXAMINERS. *See* DEPARTMENT OF THE INTERIOR, III, b, 32-36.

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#### PERIODICAL PUBLICATIONS.

DUTIES ON. *See* CUSTOMS LAWS, IV, 190.

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#### PERMANENT COURT OF ARBITRATION.

*See* GENERAL ARBITRATION BOARD.

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#### PERSONAL PROPERTY.

DISPOSITION OF PERSONAL EFFECTS FOUND ON PRISONER AT TIME OF HIS ARREST. *See* EXTRADITION, 10, 11.

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#### PHILIPPINE ISLANDS.

1. **Citizenship.**—The attitude of the executive and legislative departments of the Government has been, and is, that the native inhabitants of the Philippine Islands did not become citizens of the United States by virtue of the cession of the islands by Spain by means of the treaty of Paris. 23 Op. 370.

2. **Citizenship.**—Seamen born in the Philippine Islands, being persons whose civil and political status is, by the treaty of peace with Spain (30 Stat. 1759), declared to be a matter for the future determination by Congress, are not citizens of the United States within the meaning of any statute concerning seamen or any other statute or law of the United States. 23 Op. 400.

3. **Civil service.**—There is nothing in the recent decisions of the Supreme Court (in the insular cases) that would modify the view taken by the Attorney-General regarding the proposed amendment to the civil-service rules, that every applicant for examination for appointment to the executive civil service of the United States in the Philippine Islands must be a citizen of the United States or a native inhabitant of said islands. 23 Op. 458.

4. **Contract labor.**—Certain natives of the Philippine Islands, not being professional actors, artists, or singers, within section 5 of the contract-labor law of February 26, 1885 (23 Stat. 332), are properly excluded, unless on other grounds they may be regarded as not within the prohibition of the law. 22 Op. 495.

5. **Same.**—As the claim of these aliens for admission appears meritorious and no possible competition with American labor will be involved, and as they will be returned to their country in due time, there is no conclusive objection to the Secretary of the Treasury exercising his favorable administrative discretion in admitting them. *Ib.*

6. **Same.**—The law does not necessarily exclude all persons who do not come within its express exceptions if they are not manual laborers. *Ib.*

7. **Copyright laws.**—When the Philippine Islands and Porto Rico have been duly ceded to the United States their respective inhabitants will not be entitled to the benefits of the copyright laws unless the treaty by its terms confers such right, or Congress shall extend such laws to the inhabitants of those countries. 22 Op. 268.

8. **Copyright law.**—The provisions of the copyright act of March 3, 1891 (26 Stat. 1107), which requires that the two copies of books, photographs, chromos, or lithographs required to be deposited with the Librarian of Congress shall be printed from type set within the limits of the United States, are not complied with by depositing with that officer copies of publications printed from type set within the Philippine Islands. 25 Op. 25.

9. **Same—Constitution not extended.**—Congress has not extended the copyright laws to the Philippines, but has enacted, in setting up a separate government for those islands, that section 1891 of the Revised Statutes, extending the Constitution and applicable laws to organized Territories, is not to be in force in the Philippines. *Ib.*

10. **Copyright and trade-mark laws.**—The Philippine Islands are not "a foreign state or nation" within the meaning of the copyright laws, and the inhabitants of those islands are entitled to avail themselves of the benefits of those laws within the United States. Opinion of December 2, 1898 (22 Op. 268), overruled. 25 Op. 179.

11. **Same.**—The proviso contained in section 4956, Revised Statutes, that the two copies of books, photographs, chromos, or lithographs required to be deposited with the Librarian of Congress shall be printed from type set within the limits of the United States, is not complied with by depositing with that officer copies of publications printed from type set within the Philippine Islands. Opinion of July 28, 1903 (25 Op. 25), adhered to. *Ib.*

12. **Same.**—The Librarian of Congress in determining what fees should be charged under section 4958, Revised Statutes, for the recording, etc., of copyrights, should treat a citizen or resident of the Philippine Islands as "a person not a citizen or resident of the United States." *Ib.*

13. **Same.**—Owners of trade-marks who are residents of the Philippine Islands are not entitled to obtain registration thereof under our laws, for the reason they are not "domiciled in the United States or located in any foreign country or tribes, etc.," as required by the act of March 3, 1881 (21 Stat. 502). Opinion of February 19, 1902 (23 Op. 634), adhered to. *Ib.*

14. **Patent Laws.**—The Attorney-General declines to answer the question whether citizens of the Philippine Islands are entitled to the benefits of the patent laws of the United States, there being no case involving that question pending before the Department making the inquiry. *Ib.*

15. **Registration of trade-marks.**—The Philippine Islands not being organized Territories of the United States as contemplated by section 1891, Revised Statutes, the residents of those islands are not as such entitled to the privileges of the trade-mark law. 23 Op. 634.

16. **Customs duties on Spanish publications.**—All such Spanish scientific, literary, and artistic works, not subversive of public order, which are published in Spain and thence imported into the Philippine Islands as were entitled to free entry into those islands under the Spanish tariff in force when our Government began to exercise authority therein, are entitled, under Article XIII of the treaty of peace with Spain (30 Stat. 1760), to continue to be admitted free of import duty and of the duty or charge of 2 per cent ad valorem for harbor and commercial improvement charges, under section 20 of the Philippine tariff, for the period of ten years from the

date of the exchange of the ratifications of the treaty, which privilege includes the bindings, in which such works, if publications, are inclosed, provided such bindings were previously admitted free. 23 Op. 115.

17. **Manila not a foreign port.** 24 Op. 28.

18. **Internal-revenue tax.**—Cigars shipped from the Philippine Islands to the United States are not subject to internal-revenue tax under section 3402, Revised Statutes. 24 Op. 120.

19. **Same.**—Prior to the passage of the act of July 1, 1902 (32 Stat. 691), the Philippine Islands were "within the exterior boundaries of the United States" within the meaning of section 3448, Revised Statutes, and subject to its provisions; but since its passage the provisions of that section have been inoperative in those islands, section 1 of that act providing in effect that the laws of the United States shall not apply to the Philippine Islands. No internal-revenue tax, therefore, can be imposed under the laws of the United States on cigars shipped into this country from the Philippine Islands. *Ib.*

20. **Head tax.**—Citizens of the Philippine Islands coming to the United States from foreign ports are not required to pay the head tax prescribed by section 1 of the act of March 3, 1903 (32 Stat. 1213). 25 Op. 131.

21. **Philippine land purchase bonds.**—The issue and form of bonds proposed by the Secretary of War for carrying out the provisions of sections 63, 64, and 65 of the Philippine civil government act of July 1, 1902 (32 Stats. 706, 707), are in strict conformity with the statute and are legal in all respects. 25 Op. 89.

22. **Same.**—There is no legal objection to the Treasurer of the United States receiving the principal and interest of the Philippine land purchase bonds from the Philippine government, and distributing the same to the holders of the securities, nor to the Register of the Treasury of the United States registering and recording said bonds, provided the officers in question are willing and the Secretary of the Treasury consents and approves; but there is no specific provision of law authorizing the performance of such services. 25 Op. 98.

23. **Same.**—As a general rule, when it is sought to exercise any official power or function, explicit authority must be found in the

law; but the application of this doctrine is not necessarily universal, and depends upon the character and relations of the particular power and all the germane circumstances. *Ib.*

24. **Same.**—Suggested that Congressional action be sought to provide for the various features of expense, compensation to the Government or its officers, official liability for the faithful performance of the trust, etc. *Ib.*

25. **Bond Issue—Validity of.**—Act No. 1323 of the Philippine Commission, to provide funds for the construction of sewers, etc., in the city of Manila, contemplates an issue of bonds to the amount of \$4,000,000, which will be in strict conformity with the provisions of the act of July 1, 1902 (32 Stat. 708), authorizing the issuance of such bonds. 25 Op. 419.

26. **Taxation — Philippine government — Power to tax gross receipts of the Commercial Pacific Cable Company.**—Act No. 1189 of the Philippine Commission does not confer upon the Philippine government the power to impose a tax upon the gross receipts of the Commercial Pacific Cable Company, nor has Congress conferred upon that Commission the authority to enact a law imposing such a tax upon that company. 25 Op. 563.

27. **Same—Power to tax imports.**—The Philippine government has no power, under section 139 of the internal-revenue law of 1904 enacted by the Philippine Commission, to impose a tax upon meat brought into the Philippine Islands from Australia and delivered to the United States on board its vessels in the harbor of Manila. 25 Op. 582.

28. **Same.**—A tax upon such a sale would be equivalent to a tax on imports, which the Philippine Commission, under the present law, have not the power to impose. *Ib.*

29. **Spanish railway concessions.**—The provinces in the Philippine Islands through which a railroad was built in pursuance of a royal decree of April 9, 1885, and which in large measure received the benefit of said railroad, are equitably obligated to make some fair arrangement with the company as to the two-thirds of the guaranteed interest which the decree imposed upon the province. 23 Op. 181.

30. **Same.**—This concession of Spain is regarded as a personal contract, binding on the

parties who made it and equitably on the provinces affected thereby; but whatever obligation, if any, rests upon the United States in regard thereto, it is something different from the contract obligations and may or may not coincide with its terms. *Ib.*

31. **Same.**—Congress will determine whether, based upon the reception of benefits from the railroad, the United States has incurred one-third or any such portion of the original indebtedness which, under the decree, was to be paid from the royal or peninsular funds in the Philippine treasury. *Ib.*

32. **Same.**—As Congress has not yet determined the future permanent status of the islands, the President has authority to settle this preexisting accrued indebtedness, if he believes that the settlement can not justly and wisely be left to await action by the future government. *Ib.*

33. **Same.**—In such case the President, or, with his consent, the military government, may apply the local revenues of the provinces through which this road extends to the discharge of their equitable liability, based upon so much of the concessionary agreement as has been already executed, the amount of which liability he has authority to determine in view of all the facts and circumstances. *Ib.*

34. **Spanish concessions for telegraphs.**—The concessions secured from Spain by English telegraph companies in Cuba and the Philippines are not binding, as contracts, on the United States, Cuba, the Philippines, or other governments replacing Spain; but, as to the Philippine cables, it does not follow from this fact that no obligation whatever exists. 23 Op. 195.

35. **Same.**—There is an equitable obligation on the part of the four islands connected by cables, and on the part of the archipelago as a whole, with regard to the concession for interisland cables in the Philippines, which concession provides for an annual subsidy. *Ib.*

36. **Same.**—With regard to two other concessions for cables, from Bolinao to Manila and from Bolinao to Hongkong, which do not call for pecuniary subsidies, but for a monopoly during a certain number of years, the equitable obligation upon the islands concerned, and upon the archipelago, though less obvious, exists. *Ib.*



37. **Same.**—It is for Congress to determine whether any such obligation exists on the part of the United States. *Ib.*

38. **Same.**—In the absence of any urgent reason for Executive action, the whole matter of these equitable liabilities concerning the Philippine cables ought to be left to Congress or to the permanent Philippine government. *Ib.*

39. **Spanish railway and telegraph concessions.**—Opinions of July 26 and 27, 1900 (23 Op. 181, 195), holding that the concessions granted by Spain to certain railway and telegraph companies in Cuba and the Philippine Islands are not binding as contracts on the United States, Cuba, and the Philippines, or other governments replacing Spain, affirmed. 23 Op. 451.

40. **The domestic postal service of the Philippine Islands** is under the exclusive control of the Philippine government. 24 Op. 534.

41. **Official mail coming from those islands** through the postal service of the United States should, however, comply with the general laws of the United States regulating the mails under the administration of the Postmaster-General. *Ib.*

42. **Government of the Philippine Islands—War Department.**—Under the instructions of the President to the Philippine Commission of April 7, 1900, and the Executive order of June 21, 1901, the powers and duties thereby conferred upon the Commission and the civil governor were to be exercised under the direction and control of the Secretary of War, and the act of July 1, 1902 (32 Stat. 691), in ratifying and approving the instructions and order referred to continued this relation. The reasonable inference is, therefore, that until otherwise provided Congress intended that the government for the Philippine Islands should be regarded as a branch of the War Department. *Ib.*

43. **The penalty envelopes used for the transmission of official mail from those islands** should, accordingly, bear the indorsement of the War Department. *Ib.*

44. **A patent or license granted by the Spanish Government July 11, 1898, to a Spaniard for the manufacture of hemp by steam in the Philippine Islands for the term of five years is protected by article 13 of the treaty with Spain (30 Stat. 1760), if on that date it would, in ordinary times, have been good under**

Spanish law, notwithstanding American law gives no identical rights. 22 Op. 617.

45. **The laws of Spain concerning industrial property** were contemplated by the framers of article 13 in providing protection for Spanish rights. *Ib.*

46. **A good title can be acquired by the United States to land in the Philippine Islands required for use as military posts** under either section 1 or 2 of the act of the Philippine Commission of March 5, 1903 (No. 665), the method provided by section 1 being slightly more circuitous than that provided by section 2, in that it provides for condemnation by the Philippine insular government and subsequent transfer to the United States. 24 Op. 640.

47. **The Philippine government derives the power of eminent domain** from section 63 of the organic act (32 Stat. 706). *Ib.*

48. **Title to land for Los Banos military post, Laguna.**—The title acquired from Dona Saturnina Rizal y Alonzo to certain lands at Los Banos, Laguna, P. I., for a military post, will be good, the land in question having been made the subject of possessory proceedings under the royal order of February 13, 1894, and her title thereto in fee having been upheld by the decree of the court of land claims under act No. 627, Philippine Commission, which decree binds the land and quiets the title thereto, except as to liens, claims, or rights defined in section 39 of land registration act No. 496, Philippine Commission. 25 Op. 238.

49. **Same.**—Under articles 2 and 42 of the mortgage law, articles 24–31 of the regulations thereunder, and the royal decree of November 14, 1885, etc., nearly everything that could possibly affect the title is required to be registered, and any governmental or public claim to the land would probably be notorious. *Ib.*

50. **Jurisdiction of civil and military courts.**—An officer in the Army of the United States who, while operating in the Philippines during the insurrection in those islands, and while the government of military occupation was in force therein, committed an offense against a native of those islands, was amenable only to the laws of war, and can not be tried by the civil courts of those islands or of the United States; and having left the military service, he can not now be

tried for the offense by a military court. 24 Op. 570.

51. *Same.*—A court-martial has no jurisdiction over an officer after he has left the service, and a military commission has no jurisdiction to try such officer now that peace has been proclaimed in the Philippines. *Ib.*

52. *Confinement of Filipino convicted in consular court in China.*—There is no warrant of law for confining in a Philippine prison a Filipino sailor convicted in the United States consular court at Shanghai, China, of the murder of a Chinaman on the U. S. Army transport *Listrom*, and sentenced to fifteen years' imprisonment. 24 Op. 549.

53. *Same.*—Section 5546, Revised Statutes, as amended by the act of March 3, 1901 (31 Stat. 1451), or without the amendment, contains nothing to indicate that Congress considered the home or domicile of a convict in providing for his confinement, or that in speaking of a "convenient State or Territory" the Philippine Islands were in contemplation. *Ib.*

54. *Return of property and possessions taken from insurgents.*—The military government of the United States at Manila should return to certain claimants all property and possessions taken from them by the United States in pursuance of the order of General Otis of November 25, 1898. 22 Op. 352.

55. *Transportation of Spanish soldiers to Spain.*—Under the treaty with Spain the United States obligated itself to convey from the Philippine Islands to Spain only such Spanish soldiers as were actually made prisoners of war either by the United States or by the insurgents. 22 Op. 383.

56. *Same.*—Troops remaining under arms, under the control and direction of Spanish officers, are to be removed at the expense of the Spanish authorities. *Ib.*

57. *Navy-yard employees—Compensation on holidays.*—The resolutions of January 6, 1885 (23 Stat. 516), and January 23, 1887 (24 Stat. 644), allowing pay to per diem employees "on duty in the United States," for services on certain legal holidays, do not extend to the Philippine Islands. 25 Op. 127.

PHILIPPINE PRISON. *See* 52.

#### PHILOSOPHICAL APPARATUS.

*See* CUSTOMS LAW, 232.

#### PINKERTON LAND CLAIM.

*See* PUBLIC LANDS, 46.

#### PLEURO-PNEUMONIA.

*See* HEALTH AND QUARANTINE, 17.

#### PLEDGE.

*See* INTERNAL REVENUE, II, f, (9).

#### PNEUMATIC GUN CARRIAGE AND POWER COMPANY.

*See* PREMIUMS.

#### POINT PETER, GEORGIA.

History of the title of the United States to the tract of land known as "Point Peter," situated at the mouth of St. Marys River, Georgia, given, and adverse claims to ownership of the premises set up by one Alex. Curtis, a resident of Georgia, shown to be utterly groundless. 18 Op. 384.

#### POLARISCOPIC TESTS.

*See* CUSTOMS LAW, 84.

#### POLITICAL CONTRIBUTIONS.

*See* CONGRESS, 6; CIVIL SERVICE, 9, 10.

#### PORTLAND, OREG.

*See* PUBLIC BUILDINGS, 17.

#### PORTO RICO.

1. *Citizenship.*—The attitude of the executive and legislative departments of the

Government has been, and is, that the native inhabitants of Porto Rico did not become citizens of the United States by virtue of the cession of the islands by Spain by means of the treaty of Paris. 23 Op. 370.

2. **Same.**—The act for the temporary government of Porto Rico did not confer Federal citizenship upon the inhabitants of that island. *Ib.*

3. **Civil Service.**—There is nothing in the recent decisions of the Supreme Court (in the Insular cases) that would modify the view taken by the Attorney-General regarding the proposed amendment to the civil-service rules, that every applicant for examination for appointment to the executive civil service of the United States in Porto Rico must be a citizen of the United States or a citizen of Porto Rico. 23 Op. 458.

4. A concession for the construction of a certain electric tramway in Porto Rico being inchoate and incomplete and lacking certain public action necessary to be taken by the public authorities representing the Crown of Spain before it could go into effect as a complete grant, the War Department has no authority to grant or complete such concessions. 22 Op. 551.

5. **Same.**—Under Spanish law a tramway is a railroad constructed on a public highway. *Ib.*

6. **Secretary of War—License to construct wharf.**—Prior to the passage of the Porto Rican act of April 12, 1900 (31 Stat. 77), the Secretary of War had authority, under section 10 of the river and harbor act of March 3, 1899 (30 Stat. 1151), to issue a license for the building and maintenance of a wharf in the harbor of San Juan, P. R., and the rules imposed by section 3 of the resolution of May 1, 1900 (31 Stat. 715), upon the grant of franchises by the executive council of that island do not extend to an antecedent license granted by him. 23 Op. 551.

7. **Same—Operative until revoked.**—The power to revoke the license so granted is vested in the Secretary of War, and so long as it is unrevoked the rebuilding of the wharf under such license is subject to his control and supervision, and not to that of the executive council. *Ib.*

8. **Copyright laws.**—When Porto Rico and the Philippine Islands have been duly ceded to the United States their respective

inhabitants will not be entitled to the benefits of the copyright laws unless the treaty by its terms confers such right or Congress shall extend such laws to the inhabitants of those countries. 22 Op. 268.

9. **Registration of trade-marks.**—Porto Rico being an organized Territory of the United States, and the laws of the United States not locally inapplicable having been extended to that island, its residents are entitled to register trade-marks in the United States, as provided in the act of Congress of March 3, 1881 (21 Stat. 502). 23 Op. 634.

10. **Customs duties.**—Merchandise from the island of Porto Rico introduced into the ports of the United States is by law required to pay the same duties that would be charged upon merchandise imported from a foreign country, and the President has no authority to alter or modify the laws under which such duties are required to be paid. 22 Op. 561.

11. **Same.**—The admission of merchandise into the ports of the United States from such conquered territory is governed solely by existing laws passed by Congress, and the President has no power to add to or detract from the force and effect of such laws. *Ib.*

12. **Customs revenues—Expenditures—The President.**—The act of March 24, 1900 (31 Stat. 51), which directs that certain Porto Rican customs revenues "shall be placed at the disposal of the President, to be used for the government now existing and which may hereafter be established in Porto Rico, and for other governmental and public purposes therein, until otherwise provided by law," vests in the Executive the power to place the disbursement of such appropriation under the control of the "Administrative authorities" instead of the "Executive Council." 23 Op. 450.

13. **Free importation of Porto Rican products.**—All articles of Porto Rican origin exported from Porto Rico to foreign countries after the passage of the Foraker Act of April 12, 1900 (31 Stat. 77), may, since the proclamation of the President on July 25, 1901, doing away with the 15 per cent duty imposed under section 3 of that act, be imported into the United States free of duty under paragraph 483 of the tariff act of July 24, 1897 (30 Stat. 195), provided the articles have not been advanced in value or improved in

condition by any process of manufacture or other means. 24 Op. 55.

**14. Same—Internal revenue.**—Such free importation does not, however, affect the question of the payment of the internal-revenue tax provided for in section 3 of the Foraker Act *Ib*.

**15. Free importation of tobacco grown in Porto Rico.**—Tobacco grown in Porto Rico after the cession of that island to the United States and brought into this country for warehousing, and afterwards exported to Canada and thence returned to the United States, is within the benefits of paragraph 483 of the act of July 24, 1897 (30 Stat. 195), but subject to the internal-revenue tax provisions of section 3 of the act of April 12, 1900 (31 Stat. 77). 24 Op. 612.

**16. Native Porto Rican, an American artist—Free entry of paintings.**—A native Porto Rican, an artist by profession, although temporarily living in France on the 11th day of April, 1899, is, under section 7 of the act of April 12, 1900 (31 Stat. 79), a citizen of Porto Rico, and, as such, is an American artist, whose paintings upon importation into the United States are entitled to the privileges provided in paragraph 703 of the tariff act of July 24, 1897 (30 Stat. 203). 24 Op. 40.

**17. Storage charges, etc., collected in Porto Rico.**—Storage charges, fines, penalties, and forfeitures, and other collections, not duties or taxes, made by customs officers in Porto Rico in the administration of the customs laws, should be deposited to the credit of the Treasurer of the United States. 24 Op. 621.

**18. Exhorto or letter rogatory.**—There is no law, Federal or State, which requires or authorizes any court of New York to comply with an exhorto or letter rogatory issued by the tribunal of the district of San Juan, P. R., to the judge, tribunal, or court of justice in New York, requesting the latter to order certain persons in that State to appear as defendants in an action instituted in said tribunal. 23 Op. 112.

**19. Fortifications act—Range finders.**—The appropriation contained in the fortifications act of May 25, 1900 (31 Stats. 183, 184), for the installation of range and position finders may be used for the installation of these instruments in Porto Rico. 23 Op. 390.

**20. Head tax—Immigration fund.**—The head tax upon alien passengers brought into

ports of Porto Rico should be accounted for and credited to the "immigrant fund," as is done with like collections upon alien passengers arriving at ports in the United States. 24 Op. 86.

**21. Same—Immigration act.**—Section 14 of the act of April 12, 1900 (31 Stats. 77, 80), "to provide revenues and a civil government for Porto Rico," gives force and effect in that island to the immigration act of August 13, 1882 (22 Stat. 214). *Ib*.

**22. National banks.**—By virtue of section 14 of the act of April 12, 1900 (31 Stat. 77), the laws of the United States relative to the organization and powers of national banks were extended to Porto Rico. 23 Op. 169.

**23. Public lands and property in Porto Rico.**—The power to dispose permanently of the public lands and property in Porto Rico rests in Congress, and in the absence of a statute conferring such power, can not be exercised by the Executive Departments of the Government. 22 Op. 545.

**24. Same.**—During the military control of Porto Rico leave or license may be granted an individual to make temporary use of portions of the public domain. *Ib*.

**25. Same.**—The grant of such a right or privilege to exist in perpetuity, or as long as the conditions of the grant are fulfilled, is beyond the power of the Secretary of War, and ought not be made. *Ib*.

**26. Public lands of.**—The so-called "public lands" of Porto Rico which, prior to the treaty of Paris of December 10, 1898 (30 Stat. 1754), belonged to Spain, were, by that treaty, ceded to and now belong to the United States, and not to Porto Rico. 24 Op. 8.

**27. Remission of taxes—Orders of the governor-general.**—By the act establishing the government of Porto Rico, the orders of the governor-general of August 22, September 6, and October 4, 1899, relative to the remission of taxes, were made a part of the substantive law of the island. As such they are binding upon the present administration to the same extent as they bound the military government. 23 Op. 167.

**28. Same.**—The action of the governor in approving each specific remission is purely executive and administrative and in no sense legislative. *Ib*.

**29. Same—Governor—Rules and regulations.**—The governor has power to establish

rules and regulations governing the submission to him of claims for remission of taxes for which his approval is sought. He may require that such applications shall be brought within a specified time and require the establishment of certain facts. *Ib.*

**30. Franchises—Exemption from taxation by executive council.**—The delegation by Congress to the executive council of Porto Rico by the thirty-second section of the act of April 12, 1900 (31 Stat. 83), of the power to grant franchises respecting the public utilities of that island did not confer upon it the other sovereign power of taxation, including the authority to exempt from taxation. 23 Op. 490.

**31. Same.**—The power to grant franchises and the power to tax are different and distinct things. The power of taxing or of exempting franchises from taxation can not be regarded as in any sense incidental to that of granting franchises, and is by the act of April 12, 1900, delegated to the legislative assembly of Porto Rico. *Ib.*

**32. Same.**—The action of the executive council, therefore, in so far as it attempts to exempt from taxation the property of a company which it has granted a franchise, is void, and the President should not approve such a franchise. *Ib.*

**33. Same.**—As the franchises granted to the *Compania de los Ferrocarriles de Puerto Rico* and the *Port America Company* by the executive council of Porto Rico and approved by the governor thereof provide that the exemption from taxation therein granted "shall not become effective or operative until the legislative assembly of Porto Rico shall by law duly authorize such exemption," no reason exists why the President should not approve the franchises. 23 Op. 581.

**34. The tonnage tax collected in Porto Rico** under section 14 of the act of June 26, 1884 (23 Stat. 57), as amended by section 11 of the act of June 19, 1886 (24 Stat. 81), should be so deposited as to be available for the maintenance in part of the *Marine-Hospital Service*. 24 Op. 122.

**35. River beds or channels.**—In Porto Rico the Crown of Spain was the owner, for public use, of the proprietary rights of the natural beds or channels of rivers, both navigable and unnavigable, to the extent covered by the waters in their ordinary greatest swells. 22 Op. 546.

**36. River Plata—Use of water power.**—In the absence of authority from Congress, neither the President nor the War Department has power to grant a concession of the right to use the water power of the River Plata in Porto Rico. *Ib.*

**37. Same.**—Any complete and vested right which a person had at the time the treaty of Paris took effect, to the use of the waters of the River Plata, should be respected by the United States. *Ib.*

**38. The coastal waters, harbors, and other navigable waters of the island of Porto Rico** are waters of the United States within the meaning and intent of section 10 of the river and harbor act of March 3, 1899 (30 Stat. 1151), although the ratifications of the treaty whereby that island was ceded by Spain to the United States were not exchanged until after the passage of that act. 23 Op. 551.

**39. The relinquishment of sovereignty over and the cession of domain by Spain to the United States of the island of Porto Rico** by the treaty of Paris of April 11, 1899 (30 Stat. 1754), must be regarded as immediate and absolute from the date of its signature, subject only to the possibility of a failure of ratification. *Ib.*

**40. Culebra Islands.**—Under the treaty of peace with Spain (30 Stat. 1755), the Culebra Islands constitute a part of Porto Rico. 23 Op. 564.

**41. Same—Local control of "harbor shores, docks, slips, and reclaimed lands."**—By the thirteenth section of the act of April 12, 1900, providing a civil government for Porto Rico (31 Stat. 77), Congress committed to local control, subject to the express limitation upon the local legislative power, the administration of certain public property and utilities, including "harbor shores, docks, slips, and reclaimed lands," but excluding "harbor areas or navigable waters." *Ib.*

**42. Same—Retrocession of part needed for United States naval station.**—Since the General Government made no reservation, express or implied, of any zone or strip of harbor shore not intended to be surrendered to the local government by that act, the United States should obtain, in accordance with the usual methods of authorization by Congress, a transfer of such individual property rights as may be involved, and a retrocession *pro tanto* from the government of Porto Rico of such

part of the Culebra Islands as may be needed for a naval station. *Ib.*

**43. Same.—Assignment by President not warranted.**—The Navy Department would not be warranted in requesting the President to make assignment to it of the Culebra group of islands for a naval base, so far at least as that portion of the plan is concerned which involves harbor shores, or any other branch of the rights and property committed by section 13 of the act of April 12, 1900, to the administration of the government of Porto Rico. *Ib.*

**44. Naval reservation—Shore line.**—By proclamation of the President of June 26, 1903, the following-described lands were reserved for naval purposes: "All public lands, natural, reclaimed, partly reclaimed, or which may be reclaimed in the island of Porto Rico, embraced within the following boundaries." The boundaries to the north and west are definitely described. On the south it was to be bounded by "the shore of the harbor, and to extend east 2,400 feet, more or less, to include 80 acres." The eastern boundary was not defined: *Held* that this area can not be made up in part of submerged lands or harbor areas which may be reclaimed, but that the southern boundary should run along the present shore of the harbor, extending as far easterly as is necessary to include 80 acres within the area described. 25 Op. 172.

**45. Same.—The word "shore," in Spanish law,** means that space of land which the waters in the movement of the tide alternately cover and uncover, the limit of the inner or land line being at the point of the highest equinoctial tides. Where the tides are perceptible, the shore line begins on the land side of the line reached by the waters in storms. *Ib.*

**46. Same.—The "seashore," in the United States,** is that space of land on the border of the sea which is alternately covered and left dry by the rising and falling of the tide; the space of land between high and low water mark. *Ib.*

**47. Navigable waters—Jurisdiction.**—The United States may establish aids to navigation on submarine sites under navigable waters of Porto Rico without cession of jurisdiction having first been made by Porto Rico to the United States. 25 Op. 166.

**48. Title of United States to Cabras Island.**—The facts contained in a certificate of the record by the registrar of property at Humacao are sufficient evidence that the United States will, upon the purchase thereof, acquire from the grantors a good and unencumbered title to Cabras Island, Porto Rico. 25 Op. 226.

**49. Same.—The conveyance should be to the "United States of America" instead of to the "Department of Light-Houses of the United States."** *Ib.*

**50. Title to Miraflores Island.**—The United States possesses a valid and complete title to the whole of Miraflores Island. That island did not belong to Porto Rico before the cession, and by the treaty of peace title to it was transferred by Spain to the United States. 25 Op. 193.

**51. The relinquishment of sovereignty over and the cession of domain by Spain to the United States of the island of Porto Rico by the treaty of Paris of April 11, 1899 (30 Stat. 1754), must be regarded as immediate and absolute from the date of its signature, subject only to the possibility of a failure of ratification.** 23 Op. 551.

**52. Rent of post-office building at San Juan—Demand of the insular government.**—The Postmaster-General may properly refuse the demand of the insular government of Porto Rico for rent for the post-office building at San Juan which belonged to the Spanish Government and came into the possession of the United States with the cession of Porto Rico. 23 Op. 571.

**53. Same—Ownership of public buildings, etc.**—The question whether certain public buildings and structures in Porto Rico are owned by the United States or Porto Rico, and whether various public utilities and functions are to be controlled or exercised by the national or local government under the treaty with Spain and the existing laws, not decided. *Ib.*

**54. Schoolhouses.**—The act of April 12, 1900 (31 Stat. 77) entitled "An act temporarily to provide revenues and a civil government for Porto Rico," etc., does not repeal, either expressly or by implication, and is not inconsistent with, the act of March 24, 1900 (31 Stat. 51), which appropriates, for the benefit and government of Porto Rico,

the revenues collected on importations therefrom prior to January 1, 1900. 23 Op. 329.

55. *Same.*—The President may lawfully direct that a portion of the latter appropriation be used for the purpose of erecting and equipping schoolhouses in that island. *Ib.*

56. **Nationalized Porto Rican vessels.**—Section 12 of the act of June 26, 1884 (23 Stat. 56), which provides that consular officers rendering official services to American vessels and seamen, shall furnish the master of every such vessel with an itemized statement of such services performed, and make a report thereof to the Secretary of the Treasury, and for such services shall receive from the Treasury Department the same compensation that they would have received prior to the passage of that act, applies equally to services rendered to nationalized Porto Rican vessels. 23 Op. 414.

57. *Same.*—The ninth section of the Porto Rican organic act of April 12, 1900 (31 Stat. 79), provides for the nationalization of all vessels owned by the inhabitants of Porto Rico on April 11, 1899. Such nationalization placed those vessels upon the same footing as all other privileged American vessels, and conferred upon them the benefits of the act of 1884. *Ib.*

58. A Porto Rican engaged in the occupation of a seaman in the American merchant marine, including that of Porto Rico, is an American seaman within the meaning of the statutes relating to relief by consuls, in view of the provisions of sections 9 and 14 of the act of April 12, 1900 (31 Stat. 79), providing a civil government for Porto Rico. 23 Op. 400.

Affirmed. 23 Op. 414.

59. **Marine-Hospital Service—Eligibility of citizen of Porto Rico.**—The question as to whether or not a citizen of Porto Rico, legally a resident of New York, is eligible for appointment in the Marine-Hospital Service under a departmental regulation which requires the applicant to be a citizen of the United States, or, if of foreign birth, to furnish proof of American citizenship, does not involve any question of law within the meaning of section 356, Revised Statutes, and therefore is not one properly calling for an opinion of the Attorney-General. The requirement not being demanded by law, its interpretation may properly be left to the department or

bureau responsible for its existence and execution (18 Op. 521, 20 Op. 649, 21 Op. 255, followed). 25 Op. 183.

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#### POSSE COMITATUS.

Troops of the United States can not, without violating the provisions of section 15 of the act June 18, 1878 (20 Stat. 152), be employed as a posse comitatus to aid the United States marshal or his deputies in arresting certain persons in the State of Kentucky charged with robbing an officer of the Government. 17 Op. 71.

*See also* INDIAN TERRITORY, 9.

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#### POST EXCHANGE.

*See* ARMY, I, e.

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#### POST-OFFICE BUILDINGS.

*See* PUBLIC BUILDINGS.

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#### POSTAGE.

*See* POSTAL SERVICE, V.

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#### POSTAL CONVENTIONS.

*See* TREATIES AND CONVENTIONS, 62-70.

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#### POSTAL GUIDES.

*See* POST-OFFICE DEPARTMENT, 1-3.

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#### POSTAL NOTES.

*See* POSTAL SERVICE, 150.

# POSTAL SERVICE.

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## I. Laws and Regulations.

1. Section 1019 of the Postal Regulations (edition of 1887) can not prevail over, but must yield to, the subsequently adopted amendment of clause 5 of Railway Rule II, adopted August 19, 1889, which excepts from examination clerks in the Railway Mail Service who are "employed exclusively as porters in handling mail matter in bulk, in sacks, or pouches, and not otherwise," which clause should be strictly confined to the class of transfer clerks therein mentioned. 19 Op. 583.

2. Section 1099 of the Postal Laws and Regulations is not annulled by the act of March 17, 1882 (22 Stat. 29), which authorizes the Postmaster-General to grant relief to postmasters for the loss of money-order funds in certain cases. 18 Op. 369.

3. Sections 3985 and 3993, Revised Statutes, with regard to the carriage of letters by other than Government agencies, are not in derogation of common right. They are reve-

nue laws and are not to be strictly construed, though they impose penalties. 21 Op. 394.  
*See also* LOTTERY.

## II. Officers and Employees.

### a. *Postmaster-General.*

4. *Bidders for mail contracts.*—The Postmaster-General may require from the bidder for mail contract conformity to all proper and reasonable administrative regulations of the Post-Office Department; and if the bidder neglects to conform thereto, his bid may be rejected. 17 Op. 285.

5. *Bid for mail contract accompanied by worthless bond.*—Where the Postmaster-General is satisfied, from reliable information, that the bond accompanying a bid for a mail contract is worthless and therefore unacceptable, he may and should treat the bid as though it were unaccompanied by a bond. 17 Op. 293.

6. *Same.*—The statutory requirements relative to bids for mail contracts, by which, *inter alia*, every proposal must be accompanied by a bond with sureties, are intended for the protection of the Government against worthless bids. *Ib.*

7. The Postmaster-General should advertise for proposals for the work of engraving and printing United States postage stamps, for which work the Bureau of Engraving and Printing may be permitted to compete. 22 Op. 40.

8. *Mail transportation—Compensation—Reduction in speed.*—The act of April 7, 1880 (21 Stat. 71), places no restriction upon the Postmaster-General as to the compensation to be allowed for the transportation of mail when a reduction in speed below the contract rate is proposed. In such cases he is at liberty to act as in his judgment the good of the service and the interests of the public may demand. 17 Op. 240.

9. *An order made by the Postmaster-General suspending pay of a mail contractor, for fraudulent representations, is entitled to every reasonable presumption to support it, and should not be vacated by a successor in office on unsupported application for that purpose, or where no substantial ground is shown for the application.* 20 Op. 281.



**10. The principle of *res adjudicata* applies to departmental action of a final nature.** *Ib.*

**11. Accounts for mail transportation—Audit.**—It is not incumbent upon the Postmaster-General to have an account for mail transportation performed in July, 1876, audited in favor of the Lake Superior and Mississippi Railroad Company, until satisfactory evidence is presented that the company has maintained its existence and that there are proper officers to receive and receipt for the money. 18 Op. 129.

**12. Lottery—Return of registered letters.**—Until the Postmaster-General has found, upon evidence satisfactory to himself, that any lottery, gift enterprise, or scheme is a means of fraudulently obtaining money through the mails, he is not authorized to instruct postmasters to return registered letters or to forbid them to pay money orders because the same are addressed or made payable to an individual conducting such lottery, gift enterprise, or scheme. 18 Op. 325.

**13. Fraud orders—Denial of mail facilities.**—The acts of September 29, 1890 (26 Stat. 466), and March 2, 1895 (28 Stat. 964), for the suppression of lotteries, are constitutional and empower the Postmaster-General to deny all mail facilities to those engaged in any of the classes of business described therein. 21 Op. 314.

**14. Fraud orders.**—The Postmaster-General is legally justified in issuing a fraud order against the People's United States Bank, of St. Louis, Mo., under the facts set forth in the papers submitted, which show that by the published false representations of its officers, acquiesced in and accepted by the bank, it is conducting a scheme or device for obtaining money through the mails by false and fraudulent pretenses. 25 Op. 503.

**15. Same.**—The evidence upon which a fraud order may issue must, under section 3929, Revised Statutes, as amended, be satisfactory to the Postmaster-General, and when he is satisfied, it lies within his discretion to issue or not issue the order. *Ib.*

**16. No power to make the tops of letter boxes authorized depositories for mail.**—The Postmaster-General can not by an order to letter carriers directing them in regard to the collection of papers which they may find upon the outside of letter boxes, make the tops of

those boxes authorized depositories for mail matter. 17 Op. 524.

**17. Indemnity for foreign mail.**—The act of February 27, 1897 (29 Stat. 599), authorizes the Postmaster-General to establish, as part of the system of registration, rules providing for indemnity for foreign as well as domestic first-class registered matter lost in the mail. 22 Op. 290.

**18. Indemnity on foreign mail.**—Until Congress shall otherwise provide with reference to indemnity for lost registered mail the Postmaster-General may either pay the limited indemnity on foreign matter, as provided in the act of February 27, 1897 (29 Stat. 599), irrespective of what other countries may do, or so amend the rules of the Department as to limit the indemnity to lost registered matter originating in and addressed to a place within the United States. 22 Op. 363.

**19. Postal conventions—Authority to conclude.**—The Postmaster-General has power, under section 398, Revised Statutes, with the approbation of the President, to conclude a postal convention with a foreign country for admission to and transmission through the mails exchanged with such foreign country of parcels of mail matter of either class exceeding 4 pounds in weight. The limitation as to weight of mail packages in section 3879, Revised Statutes, applies only to domestic mail service. 19 Op. 39.

**20. Same.**—Section 398, Revised Statutes, relates to foreign, and section 3879 to domestic, mail service. 19 Op. 39, 42.

*See also TREATIES AND CONVENTIONS, 64-70.*

**21. Rent of post-office building at San Juan, Porto Rico.**—The Postmaster-General may properly refuse the demand of the insular government of Porto Rico for rent for the post-office building at San Juan, which belonged to the Spanish Government and came into the possession of the United States with the cession of Porto Rico. 23 Op. 571.

**22. Detail of registry clerk to the White House.**—The Postmaster-General had no authority to detail a registry clerk from the Washington post-office on detached service at the White House; and the accounting officers of the Treasury having refused to allow credits to the postmaster for salary paid such clerk for the period covered by the detail, that officer must be remitted to Congress for an appropriation for his relief. 25 Op. 302.

**23. Return Postage Clearing Company.**—The Postmaster-General is without authority to put into operation the plan of the Return-Postage Clearing Company, designed to relieve advertisers and others from paying postage on return cards and envelopes until they are actually deposited in the mails and reach the office of destination, and giving to that company the exclusive control of the sale of such return envelopes and postal cards, for the reason that its adoption would violate the spirit and also the letter of many of the provisions of the postal laws. 25 Op. 354.

**24. Cancellation of postage stamps—Change of ink.**—The Postmaster-General is authorized by the act of June 20, 1878 (20 Stat. 240), to substitute, for the black printing inks and writing fluids used under section 721, Postal Regulations, any canceling ink which is uniform and which actual experiment and test have shown to his satisfaction to be best calculated to guard against fraud, and to order its use in all post-offices where stamps are canceled. 18 Op. 131.

**25. Postal Guide.**—The determination of what shall be the contents of the Postal Guide rests entirely with the Postmaster-General. 19 Op. 521.

**26. Telegraph.**—The power given the Postmaster-General to contract for carrying the mail does not include authority to contract for sending messages by telegraph for the benefit of the people at large. Mail matter as defined by statute, does not include telegraphic correspondence as such. 19 Op. 650.

**PURCHASE OF RECORDS OF THE POSTAL DEPARTMENT OF THE LATE CONFEDERATE STATES.** See POST-OFFICE DEPT. 12.

**RELIEF OF POSTMASTERS FOR LOSS OF MONEY ORDERS AND FUNDS.** See POSTAL SERVICE, II, b.

See also COPYRIGHT, 10; OCEAN MAIL SERVICE, 3; TREATIES AND CONVENTIONS, 68.

*b. Postmasters—Assistant Postmasters.*

**27. Oath.**—"While postmasters in common with all other officers of the United States except the President, are now required to take the oath of office prescribed in section 1757, Revised Statutes, they are not exempted from taking the oath prescribed by the act of March 5, 1874 (18 Stat. 19), relative to the per-

formance of duties in the postal service, but must take this also." 18 Op. 182.

**28. Bond—Sureties.**—The responsibility of sureties on the bond of a postmaster whose commission expired at the close of a session of the Senate which failed to act on his renomination, will continue for sixty days thereafter under the provisions of section 3836, Revised Statutes, unless the vacancy is sooner supplied by the act of the President or the Postmaster-General. 20 Op. 447.

**29. The sureties can lawfully assume possession of the post-office and the Government property therein, and depute one of their number or another person as acting postmaster, to perform the duties of the office until a successor is appointed and takes possession.** *Id.*

**30. Suspension—Appointment of special agent to take charge of office.**—Section 3836, Revised Statutes, under which in certain cases a special agent may be put in charge of a post-office, does not apply to the case of a suspension of a postmaster by the President under section 1768, Revised Statutes. Such agent might, of course, be designated by the President, but he would be required to give bond as required by the latter section. 17 Op. 475.

**31. Expiration of the commission of a postmaster whose office is reduced in grade.**—Where, as under the act of March 3, 1883 (22 Stat. 600), a post-office of either the first, second, or third class (all of which classes are filled by appointment by the President) is by law reduced to a post-office of the fourth class (which is filled by appointment by the Postmaster-General), the commission of the then incumbent, though he may not have served out the term for which he was appointed, expires, and a new appointment (by the Postmaster-General) becomes necessary. 18 Op. 271.

**32. To entitle a postmaster to receive compensation for issuing and paying money orders** under the provisions of section 4047, Revised Statutes, he must earn it by performing the service himself or having it performed by a clerk or agent employed and paid by him for that purpose. 17 Op. 627.

**33. Salaries.**—The act of March 3, 1883 (22 Stat. 487), merely directs the readjustment of the salaries of postmasters to be made in accordance with the preexisting law, leaving the meaning of the latter to be

determined in the usual and proper methods. 17 Op. 658.

**34. Same.**—By that act the Postmaster-General is required to make, on behalf of an applicant thereunder, the adjustment or readjustment of salary which he may claim and be found to have been entitled to, at any one or more of the biennial periods since the act of July 1, 1864 (13 Stat. 335), under the latter act as amended by the proviso added thereto by the act of June 12, 1866 (14 Stat. 59), crediting the applicant with any difference in his favor between the amount of the salary so readjusted for the prospective biennial period and the salary paid to him for the time of his service in such period. *Ib.*

**35. The readjustment of postmaster's accounts** directed by the acts of July 1, 1864 (13 Stat. 335), June 12, 1866 (14 Stat. 59), and March 3, 1883 (22 Stat. 487), takes effect in all cases prospectively. These acts do not warrant the readjustment of a claim for a retrospective settlement. 18 Op. 17.

Opinion of February 13, 1884 (17 Op. 658), referred to and explained. *Ib.*

**36. Postmasters' accounts in the custody of the Auditor of the Treasury for the Post-Office Department** are papers in the Treasury Department, within section 1076, Revised Statutes. 20 Op. 677.

**37. Relief of postmasters for loss of money-order funds.**—The act of March 17, 1882 (22 Stat. 29), which authorizes the Postmaster-General to grant relief to postmasters for the loss of money-order funds in certain cases, does not annul the requirements of regulation 1099 of the "Postal Laws and Regulations," whereby the postmaster is to make good the loss should he fail to comply with such regulation. 18 Op. 369.

**38. Same.**—Nor is the Postmaster-General at liberty, so long as the regulation is in force, to disregard it in a case where he is satisfied that the postmaster had in fact remitted the money lost, but did not have the remittance witnessed as the regulation requires. *Ib.*

**39. Same.**—The authority to credit postmasters with lost remittances being limited by the act of 1882 to cases where the remittance is made "in compliance with the instructions of the Postmaster-General," such compliance forms a necessary element in each case to bring it within the statute. *Ib.*

**40. Credit for amount of funds stolen.**—The act of September 30, 1890 (26 Stat. 525), directing the Postmaster-General to credit a certain sum to the account of a postmaster named therein, being the amount of certain postal funds stolen from his office, is mandatory and leaves no discretion to the Postmaster-General. 20 Op. 315.

**41. Postmaster's liability for money paid for clerk hire where no service was rendered.**—The Attorney-General declines to express an opinion as to the liability of the postmaster at Baltimore, Md., for a sum of money paid by him to a former clerk in the Baltimore post-office, and for which no service was performed, for the reason that the question is essentially a judicial one, amounting to an inquiry whether in regular legal proceedings a court and jury would hold that officer liable. *Advised*, however, that the circumstances may be regarded as showing a *prima facie* case of liability, and calling for action in the way of securing a judicial determination of the question of liability. 25 Op. 97.

**42. A postmaster can not lawfully refuse to receive and forward registered packages addressed to lottery companies or persons described as agents, officers, or managers thereof; nor can he lawfully refuse to issue money orders payable to such companies or to persons described in the orders as agents, officers, or managers thereof.** 18 Op. 307.

*See also* LOTTERY.

**43. An Indian residing in the Indian Territory, who is a member of one of the tribes there and not a citizen of the United States, and as such subject to tribal jurisdiction, is not eligible to appointment as a postmaster; he being incompetent, in contemplation of law, to take the required oath of office.** 18 Op. 181.

**44. Same—Official bond.**—It is also doubtful if such Indian would be competent to give the required official bond. *Ib.*

**45. Assistant postmaster—Removal.**—An assistant postmaster can only be removed by that authority which by law is vested with his appointment. 17 Op. 475.

**46. Assistant postmaster—Dishonest—Liability of Government or of postmaster.**—Where a person placed money in the hands of an assistant postmaster for the purchase of "special request envelopes," but the latter gave no receipt therefor, did not order the

envelopes, and appropriated the money to his own use—the postmaster having no knowledge of the receipt of the money at the time, and not being chargeable with any negligence in the matter: *Held* that the person who paid the money to the assistant postmaster has no claim upon the Government for the envelopes, and that the postmaster is under no liability for the money so paid to his assistant. 17 Op. 526.

*c. Clerks and Employees, Carriers, etc.*

**47. Classification of—Duty of Postmaster-General.**—The authority conferred upon the Postmaster-General by the act of March 2, 1889, chapter 374, to classify and fix the salaries of the clerks and employees in first and second class post-offices is not merely discretionary with him. It imports a duty to make the classification of such salaries which is provided for in the act. 19 Op. 324.

**48. Liability of surety on bond of dishonest postal clerk.**—Where a postal clerk has given the bond required by section 3 of the act of June 13, 1898 (30 Stat. 440), the condition of the bond being that the principal shall faithfully discharge all duties and trusts imposed on him either by law or by the rules and regulations of the Post-Office of the United States, and shall faithfully account for and pay over to the proper official all money that shall come to his hands, the surety upon such bond is liable to the full amount thereof for the entire amount of money stolen by the clerk so bonded. 23 Op. 476.

**49. Same—Extent of liability.**—In such case the liability of the surety is fixed by the condition of the bond, and is not affected by the fact that by section 3926, Revised Statutes, as amended by the act of February 27, 1897 (29 Stat. 599), the Government limits its liability for the loss of any first-class registered letter to an amount not exceeding \$10. *Ib.*

**50. Same—Remedies of the United States Government.**—The Government, as intrusted with a *commodatum*, so to speak, by the sender of a letter, and as *parens patriæ*, is justly and legally entitled to pursue its remedies against the thief, not only under the criminal law and by the administrative method of search and seizure and recovery, but through the civil tribunals as well. *Ib.*

**51. Same—Duty of the United States Government.**—The liability of the principal is the

liability of the surety, and the Government occupying the field of mail transportation to the exclusion of all others, and inviting the fullest possible use of its facilities, is morally bound to recover from a dishonest official or his surety the entire amount of his embezzlement, and is equally bound in conscience, as the statutes recognizes, to return to the owner of a registered letter the entire amount thus recovered. *Ib.*

**52. Railway postal clerks—Appointment—Qualification after civil-service rules requiring examination became operative.**—A railway postal clerk who was appointed by the Postmaster-General on April 29, 1889, without having undergone a civil-service examination (none being then required for such appointment), but who did not take the oath of office and enter upon its duties until May 18, 1889, which was after the civil-service rules for the Railway Mail Service went into effect requiring an examination thereunder as a preliminary to making an appointment like the above: *Held* to have been legally appointed on April 29; that his appointment was complete on that date, although he did not qualify by taking the oath of office until afterwards; and that no examination under the civil-service rules was required in his case. 19 Op. 410.

**53. Railway transfer clerks not exempted from examination as porters.**—The appointment of certain railway transfer clerks, who had not been examined and certified for appointment by the Civil Service Commission, was not within the amendment of clause 5 of Railway Rule II, adopted August 19, 1889, which excepts from examination clerks in the Railway Mail Service who are “employed exclusively as porters in handling mail matter in bulk, in sacks, or pouches, and not otherwise,” such appointees being clerks and not porters as above described. 19 Op. 583.

**54. Same.—Section 1019 of the Postal Regulations** (edition of 1887) can not prevail over, but must yield to, the subsequently adopted amendment of said clause 5, which should be strictly confined to the class of transfer clerks therein mentioned. *Ib.*

**55. Carriers—Reinstatement.**—In the exercise of his discretion the Postmaster-General abolished the free-delivery service at Huron, S. Dak., on January 15, 1895, and in consequence

certain carriers were separated from the service: *Held* that on the reestablishment of free-delivery service at that place the former carriers could not be reinstated under rule 9 of the civil-service rules. 22 Op. 663.

56. **Special agent.**—Section 3836, Revised Statutes, under which in certain cases a special agent may be put in charge of a post-office, does not apply to the case of a suspension of a postmaster by the President under section 1768, Revised Statutes. Such agent might, of course, be designated by the President, but he would be required to give bond as required by the latter section. 17 Op. 475.

57. **Special agent.**—“It is plain, from the reading of section 4017, Revised Statutes, that Congress intended to establish by it a distinction between the two cases of a special agent in the service of the Post-Office Department and drawing an annual salary and a special agent as “actually employed” in that service, and for that reason entitled to a *per diem* allowance.” (*Obiter*). 20 Op. 423.

### III. Transportation and Delivery.

#### a. In General.

58. The public interest requires that the Government should have a monopoly of the business of carrying letters, etc. 21 Op. 395.

59. **Transportation of letters by railroads, outside of the mails.**—A railroad company has the right to carry outside of the mails and not in Government stamped envelopes letters and packets relating to the business of the railroad on which they are carried, but it has no right to transport letters for third persons. This right includes letters written sent by the officers and agents of the railroad company which carries and delivers them, about its business, and these only. They may be letters to others of its officers and agents, to those of connecting lines, or to anyone else, so long as no other carrier intervenes. *Ib.*

60. **Same.**—Letters of a company addressed to officers or agents of a connecting line on company business and delivered to an agent of the latter at the point of connection may be carried by the latter to any point on its line, because such letters become its own on receipt by any one of its agents. *Ib.*

61. **Same.**—Any company, or any officer or employee thereof, carrying letters which are

neither written by that company nor addressed to it, is liable to the penalties imposed by law. *Ib.*

62. **Same.**—The officer or agent of the person or company sending letters to be carried contrary to law is, it seems, also liable. *Ib.*

63. **Same.**—A railroad company may not carry letters from one of its connecting lines to another although they relate to through business over the lines of all. Such letters do not “relate to its business” within the meaning of the postal regulations. *Ib.*

64. **Same.**—The expression “private hands,” in section 3992, Revised Statutes, was intended to cover all except common carriers on post routes. Neither the latter nor their employees can be considered as “private hands” under this section, and if they could be, the express or implied obligation of railroads to carry letters for each other to remotely connecting lines would amount to “compensation” within the meaning of the statute. *Ib.*

65. **Same.**—The denial of the right of railroad companies to carry letters between other companies with whose lines their own connect applies also to the carrying of letters by railroad companies for companies, corporations, or private individuals, operating car lines, transportation lines, hotels, restaurants, or any class of business that may either be connected with or not connected with the railroad proper. *Ib.*

66. **Same.**—Railroad companies can not set up any “common right” against the conditions which the law incorporates in their contracts with the Government. *Ib.*

TRANSPORTATION OF OFFICERS AND AGENTS OF THE POSTAL SERVICE. *See* RAILROADS, IV.

#### b. Bids, Contracts, Subletting— Annulment, etc.

67. **Bidding—Conformity with Department regulations.**—The Postmaster-General may require from the bidder for a mail contract conformity to all proper and reasonable administrative regulations of the Post-Office Department; and if the bidder neglects to conform thereto, his bid may be rejected. 17 Op. 285.

68. **Same.**—An erasure and interlineation in a bond increasing the amount of the penalty does not invalidate that instrument

or impair its legal effect, if in fact it was made prior to its execution. *Ib.*

69. **Same.**—The attestation of witnesses to a bond is merely for convenience of proof. The law does not require such witnesses, but it is expedient and safe always to require them. *Ib.*

70. **Same.**—If any material change is made in a bond subsequent to its execution, the instrument is thereby rendered void, unless it can clearly be shown that after the change the parties assented to it, and still acknowledge the signing and sealing to be their act. *Ib.*

71. The statutory requirements relative to bids for mail contracts (by which, *inter alia*, every proposal must be accompanied by bond with sureties) are intended to protect the Government against imposition through worthless bids. 17 Op. 293.

72. **Same.**—Where such requirements are conformed to in point of form, but the Postmaster-General is satisfied, from reliable information, that the bond is worthless and therefore unacceptable, he may and should treat the bid as though it were unaccompanied by a bond. *Ib.*

73. **Same.**—Law contemplates an acceptable bond.—The provision in section 3949, Revised Statutes, that contracts “shall be awarded to the lowest bidder,” etc., contemplates that a bid in order to entitle it to consideration should have with it an acceptable bond. A worthless bond, though regular in form, can not be regarded as such, nor does the party offering it thereby become entitled to be treated as a bidder. *Ib.*

74. **Acceptance of bid.**—Where the Government advertises for bids on designated routes for carrying the mails a formal acceptance of the bid binds the Government. 20 Op. 293.

75. **Same.**—When a successful bidder refuses to execute a contract on some honest ground or reason, he can not be held to have “wrongfully” refused or failed to execute the contract. Congress evidently meant by section 3954, Revised Statutes, as amended by the act of August 11, 1876 (19 Stat. 130), to make a distinction between a refusal on some honest ground or reason, however bad in point of law, and a “wrongful” refusal or failure proceeding from intentional disregard of the contract rights of the United States. 20 Op. 297.

76. **Subletting of contract—Annulment.**—The first *proviso* in the act of May 4, 1882 (22 Stat. 53), empowering the Postmaster-General to annul the contract of any contractor or subcontractor who shall sublet his contract for a less sum than that for which he contracted to perform the service, is prospective in its operation. 17 Op. 514.

77. **Same.**—All subletting of contracts after the date of that act is governed thereby, whether such contracts were made before that date or not. *Ib.*

78. **Same.**—The fourth *proviso* in the same act, giving any person employed by a contractor or subcontractor a lien for his compensation, or any money due such contractor or subcontractor, properly extends to contracts and subcontracts existing at the date of the act. *Ib.*

79. **Same.**—The fifth *proviso* applies to contracts thereafter made, and has no effect upon those existing prior to the passage of the act. *Ib.*

80. **Subletting of mail contract.**—Where a person who has contracted with the Government to carry the mails over several routes enters into an agreement with a third person, without the consent of the Postmaster-General, to perform the whole service he has contracted to perform with regard to one of the routes, and is to receive the whole compensation allowed therefor, such agreement is a subcontract within the meaning of the act of May 17, 1878 (20 Stat. 62), and the regulations of the Post-Office Department thereunder. 24 Op. 541.

81. **Discontinuance of contract.**—The Postmaster-General may discontinue a contract for carrying the mail before expiration of the term thereof, allowing the contractor one month's extra pay, when in his judgment the public interests require such discontinuance, for the purpose of readvertising and reletting the service on an increased schedule, in preference to permitting the contractor to perform the increased service at the pro rata to which he would be entitled under his contract. 19 Op. 146.

82. **Contracts entered into by the Post-Office Department for carrying the mail should be in the name of the United States as directed by statute.** (See sec. 3949, Rev. Stat.; also sec. 403, Rev. Stat.) 18 Op. 112.

**83. Interest of Member of Congress in the contract.**—The express condition mentioned in section 3741, Revised Statutes, that no Member of Congress has an interest in the contract, need not be inserted in those contracts made with railroad corporations. *Ib.*

**84. Authority of the Postmaster-General.**—The clause in the act of March 3, 1885 (23 Stat. 386), authorizing the Postmaster-General "to contract for inland and foreign steamboat mail service, when it can be confined in one route, where the foreign office or offices are not more than 200 miles distant from the domestic office, on the same terms and conditions as inland steamboat service, and pay for the same out of the appropriation for inland steamboat service," is permanent in character and amendatory of the general law; but the authority of the Postmaster-General thereunder is limited by the terms and conditions imposed in the latter part of the same clause. 18 Op. 411.

*c. Compensation, Allowance, Deduction, Suspension, etc.*

**85. Additional compensation for expedited service.**—The *proviso* in section 2 of the act of April 7, 1880 (20 Stat. 72), limits the power of the Postmaster-General in allowing increased pay for expedited service in carrying the mail to 50 per centum of the compensation expressed in the original contract. The *original letting*, and not any subsequent increase of service and pay, under section 3960, Revised Statutes, is made the standard of limitation. 17 Op. 166.

**86. Same.**—"Increase of service," mentioned in section 3960, Revised Statutes, relative to the carriage of mails, means an additional number of trips above that originally contracted for. "Expedited service" means a speedier performance of each trip than was originally stipulated for. *Ib.*

**87. Additional allowance—Expedited service.**—The act of April 7, 1880 (21 Stat. 71), providing for an additional allowance over original contract rate for expedition in the delivery of mails, applies only to an expedition of the service, and is not applicable where a reduction of speed is proposed. 17 Op. 240.

**88. Same.**—In such cases the act implies no restriction upon the Postmaster-General, and he is at liberty to act as in his judgment the

good of the service and the interests of the public may demand. *Ib.*

**89. Compensation.**—The authority to make contracts for carrying the mail between ports of the United States and foreign ports, given by section 4007, Revised Statutes, is limited by section 4009, Revised Statutes, with respect to the amount of compensation; so that in such contracts under the former section no greater compensation can be allowed to American steamship lines than the sea and inland postage upon the mail transported. 18 Op. 248.

**90. The allowance made to the Union Pacific Railway Company for special service,** to be paid out of the so-called "special-facilities" appropriation, can not lawfully be paid to the company in cash, but must be retained and applied as directed by section 2 of the act of May 7, 1878 (20 Stat. 58). 17 Op. 393.

**91. Deduction for nonperformance of trip, though without fault of contractor.**—Section 3962, Revised Statutes, makes it imperative upon the Postmaster-General to deduct from the pay of mail contractors the price of the trip where, without fault on their part, the trip is not performed. 17 Op. 276.

**92. Same.**—That section has the same effect as regards the pay of companies performing what is termed "recognized service," in cases where trips are not performed by them. *Ib.*

**93. Same.**—Companies performing recognized service must be regarded as contractors. The correspondence under which they came into the postal service ascertains their obligations. 17 Op. 279.

**94. Deductions for delayed transportation.**—The power conferred upon the Postmaster-General by section 3962, Revised Statutes, to make deductions from the pay of mail contractors in cases where, through no fault of the carrier, mails are delayed, as in case of a washout on a railroad, is discretionary. 18 Op. 313.

**95. Rescission of order allowing deductions.**—Where a deduction has been ordered by the Postmaster-General and he afterwards becomes satisfied that the order was made under a misapprehension of the facts, it is within his power either to directly rescind the order or to refer the matter to the Sixth Auditor under the provisions of section 409, Revised Statutes. *Ib.*

**96. Withholding payment—Surety.**—A and B had each a separate contract for transporting the mails, and the latter was also a surety for the former. A incurred indebtedness to the Government by reason of fines, penalties, and forfeitures beyond the amount due him; and the pay of B, his surety, was withheld for the protection of the Government against loss. Prior to the performance of the service by B, for which his pay was withheld, he gave a pay draft to C, which was placed on file in the Auditor's office "subject to fines, etc., in accordance with the act of Congress approved May 17, 1878, and any claim or demand the Post-Office Department may have against the contractor." *Held* that payment of an amount due B under his contract, sufficient to meet his liability as surety on the contract of A, might lawfully be withheld; and that the draft given by the former on his pay conferred upon the holder thereof no right which prevents such pay being thus withheld. 17 Op. 244.

**97. Suspension of pay—Revocation of order.**—An order made by the Postmaster-General suspending pay of a mail contractor for fraudulent representations is entitled to every reasonable presumption to support it, and should not be vacated by a successor in office on unsupported application for that purpose, or where no substantial ground is shown for the application. 20 Op. 280.

**98. Restitution of money collected from a Southern State during the civil war, which money was paid out of moneys belonging to the United States that the State had seized.**—Certain mail contractors for routes in the State of Arkansas, service on which was discontinued May 31, 1861, up to which time, from January 1, 1861, they were paid by the Government in full what was due them. Afterwards they collected from the State of Arkansas for the same period of service (January 1 to May 31, 1861) certain amounts, which were paid out of moneys belonging to the United States that had been seized by the State: *Advised* that the contractors are under a legal liability to make restitution to the United States of the amounts so collected, but that their sureties can not be held responsible therefor upon the undertaking of the latter. 18 Op. 414.

**99. Arbitration of claims of the United States.**—The right to submit to arbitration claims of the United States against certain

mail contractors held to be doubtful. Suggested that suit be brought and that the court, upon application and consent of the parties, would probably appoint an arbitrator. 17 Op. 486.

**100. Audit of account.**—It is not incumbent upon the Postmaster-General to have an account for mail transportation performed in July, 1876, audited in favor of the Lake Superior and Mississippi Railroad Company, until satisfactory evidence is presented that the company has maintained its existence and that there are proper officers to receive and receipt for the money. 18 Op. 129.

#### d. *Delivery—Free Delivery.*

**101. Delivery of mail of disputed ownership.**—Mail addressed to the "National Life Insurance Company, Chicago, Illinois," should be delivered by the postmaster to the Vermont corporation bearing that name, whose principal office is in Chicago, and not to the "National Life Insurance Company of the United States of America," an Illinois corporation, also located in that city. 25 Op. 494.

**102. Same.**—Under the law postmasters are confined to an inspection of the outside of an envelope in determining for whom a letter is intended. *Ib.*

**103. Same.**—The burden of establishing claim to a letter should be placed upon the person claiming it, to whom it is not addressed, rather than upon the person to whom it is addressed. *Ib.*

**104. Free-delivery offices.**—The President's order of January 5, 1893, amending postal rule No. 1 (under the civil-service act of January 15, 1883 (22 Stat. 403), went into effect at once in so far as it calls for classification by the Postmaster-General and for the provision of examinations by the Civil Service Commission; otherwise it went into effect at each free-delivery post-office as soon as the classification was completed and first examination provided at that office. 20 Op. 584.

**105. An extension of the free-delivery service of the Detroit post-office, so as to permit the delivery of mail to vessels in Canadian waters, is not legally authorized.** 21 Op. 173.

**106. Free-delivery offices as a class, and not offices formerly free-delivery offices, were intended to be within Postal Rule I and the present Rule III.** 22 Op. 613.



107. When free delivery is discontinued at a post-office such office ceases to be under the civil-service rules. *Ib.*

108. Where free delivery was abolished at an office and afterwards reestablished.—In the exercise of his discretion the Postmaster-General abolished the free-delivery service at Huron, S. Dak., on January 15, 1895, and in consequence certain carriers were separated from the service: *Held* that on the reestablishment of free-delivery service at that place the former carriers could not be reinstated. 22 Op. 663.

109. To entitle a person to reinstatement in the civil service under Rule IX by reason of the reduction of force, such reduction must be one required by law and not one caused by the exercise of a discretionary power vested in an executive officer. *Ib.*

AUDIT OF ACCOUNT. *See* 100.

CLAIMS OF UNITED STATES. *See* 99.

DISCONTINUANCE OF CONTRACT. *See* 81.

EXPEDITED SERVICE. *See* 85–88.

RESTITUTION. *See* 98.

SURETY. *See* 96.

WITHHOLDING PAYMENT. *See* 96.

#### IV. Mailable and Unmailable Matter.

110. Newspapers, marked "Sample copy," etc.—The following words printed upon the wrapper of a newspaper sent by mail, namely, "Sample copy. If not called for by party to whom addressed postmaster please deliver to some local teacher," held to be a direction for delivery within the meaning of section 1 of the act of January 20, 1888 (25 Stat. 1), and therefore permissible. 19 Op. 596.

111. Newspapers printing in installments an objectionable story, where some issues contain nothing objectionable.—An order of the Postmaster-General issued under the act of September 26, 1888 (25 Stat. 496), excluding a book from the mails on the ground of indecency would not justify the exclusion from the mails of every copy of certain newspapers which were republishing the book in installments or parts, as some of the parts or installments of the book appearing therein may be unobjectionable. 19 Op. 667.

*See also* LOTTERY.

#### V. Postage, Postage Stamps.

112. Postage — Newspapers issued at one place, mailed at another, for distribution at place of publication.—Where there is a letter-carrier office at the place of publication of a newspaper or periodical, and at another place, within another postal district, a newsdealer is employed by the publisher to mail at the latter place copies of the newspaper or periodical intended for distribution to subscribers at the former place, such copies are not entitled to transmission through the mail at pound rates. 17 Op. 164.

113. Same.—By "actual subscribers thereto," in section 11 of the act of March 3, 1879 (20 Stat. 359), is meant those who have in fact subscribed for a paper, and who, in subscribing, have dealt directly with the agency, or whose subscriptions have been obtained for or in behalf of the agency, the subscription list being in all cases owned by the newsdealer. *Ib.*

114. A canceled postage stamp is not an obligation or security of the United States within the meaning of section 5430, Revised Statutes. 20 Op. 691.

115. An uncanceled postage stamp is an obligation or security of the United States within the meaning of section 5430, Revised Statutes. 20 Op. 697.

116. Postage stamps are supplies within the meaning of section 3709, Revised Statutes. 22 Op. 40.

117. The Postmaster-General should advertise for proposals for the work of engraving and printing United States postage stamps, for which work the Bureau of Engraving and Printing may be permitted to compete. *Ib.*

118. Section 5413, Revised Statutes, does not apply to or limit the meaning of the words "other securities of the United States," as used in paragraph 4 of the act of March 3, 1877 (19 Stat. 344). *Ib.*

119. When the word "securities" is used in the property sense, it refers to bonds, mortgages, certificates of deposit, certificates of stock, etc. In this sense postage stamps are not investments or securities. *Ib.*

120. Second-class postage—Sunday magazine sections.—A magazine which is issued with a newspaper, but which is a separate and distinct periodical having no connection whatever with the newspaper, either in its

physical form or in the nature of its contents, is not an integral part of the paper and can not be considered a supplement within the meaning of section 16 of the act of March 3, 1879 (20 Stat. 358-361). 25 Op. 594.

**121. Same.**—Such newspaper and magazine are, however, entitled to second-class rates of postage under section 14 of that act, as being a publication "issued at stated intervals, and as frequently as four times a year." *Ib.*

**122. Same.**—The fact that the magazine part of the publication is edited and printed in one place, and the newspaper in another, is not material if they are both issued from the same place. *Ib.*

**123. Return Postage Clearing Company—Plan of.**—The Postmaster-General is without authority to put into operation the plan of the Return-Postage Clearing Company, designed to relieve advertisers and others from paying postage on return cards and envelopes until they are actually deposited in the mails and reach the office of destination, and giving to that company the exclusive control of the sale of such return envelopes and postal cards, for the reason that its adoption would violate the spirit and also the letter of many of the provisions of the postal laws. 25 Op. 854.

**124. Same.**—The long-established policy of the Government is to exercise exclusive control over the postal service. Under the plan proposed there would be a divided responsibility. *Ib.*

**125. Same.**—Section 3896, Revised Statutes, requires postage on all mail matter to be prepaid by stamps at the time of mailing, except in certain cases specially provided for by law. *Ib.*

**126. Same.**—Section 14 of the act of July 12, 1876 (19 Stat. 82), prohibits the Post-Office Department from selling stamped envelopes and paper for less than face value, including the cost of production. *Ib.*

**127. Same.**—Section 3915, Revised Statutes, provides that stamped envelopes shall be sold as nearly as may be at the cost of production, with the value of the postage stamps impressed thereon, and that "no stamped envelope furnished by the Government shall contain any lithographing or engraving, nor any printing except a printed request to return the letter to the writer." *Ib.*

**128. Same.**—Section 3920, Revised Statutes, as amended by the act of June 17, 1878 (20 Stat. 141), provides that no postmaster or other person connected with the postal service shall sell or dispose of postage stamps or postal cards, for any larger or less sum than the values indicated on their faces. *Ib.*

**129. Same.**—While it might not be a violation of section 32 of the act of March 3, 1879 (20 Stat. 362), which forbids payment of money for royalty or patent on any double postal card or envelope, the carrying into effect of the scheme would be to give the company an absolute monopoly of the sale of all such envelopes and cards, and to place it in a position to exact tribute from the public. *Ib.*

**130. Canceling ink.**—The Postmaster-General is authorized by the act of June 20, 1878 (20 Stat. 240), to substitute, for the black printing inks and writing fluids used under section 721, Postal Regulations, any canceling ink which is uniform and which actual experiment and test have shown to his satisfaction to be best calculated to guard against fraud, and to order its use in all post-offices where stamps are canceled. 18 Op. 131.

#### VI. Official Mail—Penalty Envelopes—Franking Privilege.

**131. Penalty envelopes.**—United States Commissioners are "officers of the United States," within the meaning of section 29 of the act of March 3, 1879 (20 Stat. 362), and as such are entitled to use the penalty envelope provided for by sections 5 and 6 of the act of March 3, 1877 (19 Stat. 335), in the transmission to the Departments at Washington of mail matter relating to their accounts for fees payable by the Government and other official business. 17 Op. 183.

**132. A United States marshal, upon the expiration of his term, ceases to be an officer of the United States, and is not entitled to use the "penalty envelope" in executing process (under sec. 790, Rev. Stat.) then in his hands.** 17 Op. 529.

**133. Penalty envelopes.**—Indian agents and registers and receivers of land offices are by virtue of section 29 of the act of March 3, 1879 (20 Stat. 362), entitled to use the penalty envelope for the transmission of official mail

matter between themselves and other officers of the United States or between themselves and the Executive Departments, but not for the transmission of such matter to private persons. 17 Op. 255.

134. *Same.*—These officers are not “departmental in their character” within the meaning of sections 5 and 6 of the act of March 3, 1877 (19 Stat. 335, 336). *Ib.*

135. *Same.*—When supplied with official postage stamps by the Departments, they may use them for the transmission of official mail matter as well to private persons as to other officers of the Government. *Ib.*

136. *Use of penalty envelopes by Department in making reply.*—Where a Member of Congress has addressed an inquiry about official business to a Department, or any bureau thereof, the reply may properly be addressed to the person concerned in a penalty envelope and sent unsealed to the Member (that he may take cognizance of its contents), to be by him forwarded to its destination. But in such case the use of the envelope must be strictly limited to the Department or bureau and the applicant. 16 Op. 501.

Opinion of May 25, 1880 (16 Op. 501), as to the use of the penalty envelope, reaffirmed. 17 Op. 264.

137. Section 29 of the act of March 31, 1879 (20 Stat. 362), so far as it relates to the indorsement to be placed on the penalty envelope, is a substitute for the corresponding provision in the fifth section of the act of March 3, 1877 (19 Stat. 335). Such envelope must be indorsed with a proper designation of the office from which the same is transmitted, and a statement of the penalty provided by the fifth section of the latter act. 17 Op. 631.

138. *Official mail coming from the Philippine Islands* through the postal service of the United States should comply with the general laws of the United States regulating the mails under the administration of the Postmaster-General. 24 Op. 534.

139. The penalty envelopes used for the transmission of official mail from those islands should bear the indorsement of the War Department. *Ib.*

140. The monthly bulletin published by the Bureau of American Republics, although it contains advertisements of private firms or corporations, is entitled to transmission through

the mails free of postage under the act of February 20, 1897. 21 Op. 514.

141. *Franking privilege.*—An unseated Member of Congress has no right thereafter to send public documents through the mail free of postage, under the proviso in the first section of the act of March 3, 1879 (20 Stat. 356). 19 Op. 592.

FOR FREE REGISTRATION OF OFFICIAL MAIL.  
*See VII.*

## VII. Registered Letters, Money Orders, etc.

142. *Free registration of official mail elsewhere than at Washington.*—Under the second proviso of section 3 of the act of July 5, 1884 (23 Stat. 158), a departmental officer, in the discharge of his official duties, may register letters and packages elsewhere than in the post-office at Washington. 18 Op. 49.

143. *Same.*—“Section 3 of the act of July 5, 1884 (23 Stat. 158), making appropriations for the service of the Post-Office Department, etc., does not authorize Indian agents, or receivers and registers of land offices, to free registry of official letters and packets. Such letters and packets are not registered ‘by either a Department, or a bureau of a Department,’ within the provisions of that act.” 18 Op. 54.

144. *Free registry of official mail—Executive Departments.*—The second proviso of the third section of the act of July 5, 1884 (23 Stat. 158), which authorizes the registering without the payment of a registry fee of any official letter or packet, by either of the “Executive Departments or Bureaus thereof,” embraces a department officer who, in the course of public business, is called temporarily to discharge his official duties at some place away from the seat of government; but such words do not embrace examiners, special agents, inspectors, etc., of the various departments, who are located at points outside of Washington or are traveling throughout the country. 23 Op. 316.

Opinions of May 16, 1877 (15 Op. 262), commented on, and of August 2, 1884 (18 Op. 49), affirmed. *Ib.*

145. United States pension agents are entitled to free registration of their official mail matter. 25 Op. 617.

146. **Indemnity for lost foreign registered matter.**—The act of February 27, 1897 (29 Stat. 599), authorizes the Postmaster-General to establish, as part of the system of registration, rules providing for indemnity for foreign as well as domestic first-class registered matter lost in the mail. 22 Op. 290.

147. **Same.**—The rules promulgated pursuant to said act apply to both domestic and foreign registered mail matter, and no further legislation is required in order that the provisions of the postal convention relative to loss of registered matter may become operative or to make the Department liable, to the extent therein limited, for foreign first-class registered matter lost in the mails. *Ib.*

148. **Same.**—Until Congress shall otherwise provide with reference to indemnity for lost registered mail the Postmaster-General may either pay the limited indemnity on foreign matter, as provided in the act of February 27, 1897 (29 Stat. 599), irrespective of what other countries may do, or so amend the rules of the Department as to limit the indemnity to lost registered matter originating in and addressed to a place within the United States. 22 Op. 363.

149. **Same.**—The registry provisions of the Postal Convention of Washington of January 1, 1899, are not operative in or as to the United States, but its liability is only that imposed by the act of 1897 and the rules of the Post-Office Department made in pursuance thereof. *Ib.*

RETURN OF REGISTERED LETTERS ADDRESSED TO LOTTERY COMPANIES, ETC. *See* LOTTERY, 11.

150. **Postal notes**, under the act of March 3, 1883 (22 Stat. 526), are required to be drawn payable only at the office selected by the remitter. 17 Op. 620.

151. **Same.**—"The words 'which the remitter may select' in the act of March 3, 1883 (22 Stat. 526), are substantially the ones used in section 4028, Revised Statutes, which authorizes the issue of the ordinary postal money orders; and while many reasons may exist why the designation of place of payment need not be contemporaneous with the issue where no letter of advice is sent, they do not seem to have been accepted by Congress, and the intention of the law is express that the

remitter and not the payee should select the place of payment." 17 Op. 621.

152. **Money orders.**—To entitle a postmaster to receive compensation for issuing and paying money orders under the provisions of section 4047, Revised Statutes, he must earn it by performing the service himself or having it performed by a clerk or agent employed and paid by him for that purpose. 17 Op. 627.

### VIII. Foreign Mail.

153. **Foreign magazines and newspapers transported by mail from Canada into the United States**, addressed to dealers, for the purpose of sale by them, or of being by them distributed among subscribers, are dutiable. 17 Op. 159.

154. The postal convention with Canada and section 15 of the act of March 3, 1897 (20 Stat. 359), were not intended to affect existing tariff laws. *Ib.*

155. **Printed matter other than books, received by mail from foreign countries**, under the provisions of postal treaties or conventions, is declared free of duty by section 17 of the act of March 3, 1879 (20 Stat. 360) and no distinction is there made between such as is mailed to subscribers for their own use and such as is mailed to dealers for sale. 17 Op. 187.

156. **Same.**—Books which are admitted to the international mails, exchanged under the provisions of the Universal Postal Union Convention, may be delivered to addresses upon the payment of the duty thereon. *Ib.*

*See also* OCEAN MAIL SERVICE.

INDEMNITY FOR LOST FOREIGN REGISTERED MAIL. *See* 146-149.

### IX. Printing or Purchase of Postal Matter—Envelopes.

157. **Purchase of envelopes by contract—Case of exigency.**—Section 96 of the act of January 12, 1895 (28 Stat. 624), which provides that "the Postmaster-General shall contract for all envelopes, stamped or otherwise, designed for sale to the public or for use by his own or other Departments," does not apply where an exigency requires an imme-

date delivery of envelopes to a particular Department and the public service might be seriously impaired by the necessity of a requisition upon the Postmaster-General; but it does apply to those cases in which contracts were to be made by advertisement. 21 Op. 181.

158. *Same.*—Where the public exigency requires the immediate delivery of the envelopes, they may be purchased, under section 3709, Revised Statutes, by the head of the Department in which the exigency arises. *Ib.*

159. "Special-request" envelopes.—The proviso contained in section 96 of the act of January 12, 1895 (28 Stat. 624), when construed in connection with section 3915, Revised Statutes, constitutes no substantial limitation upon the power to print and supply "special-request" envelopes. 21 Op. 119.

160. Postage stamps.—The Postmaster-General should advertise for proposals for the work of engraving and printing United States postage stamps, for which work the Bureau of Engraving and Printing may be permitted to compete. 22 Op. 40.

#### X. Civil Service.

161. Free-delivery offices as a class, and not offices formerly free-delivery offices, were intended to be within Postal Rule I and the present Rule III. 22 Op. 613.

162. When free delivery is discontinued at a post-office such office ceases to be under the civil-service rules, Rule I applying to free-delivery offices only. *Ib.*

163. Reinstatement of carriers when free delivery was abolished at an office and afterwards reestablished.—In the exercise of his discretion the Postmaster-General abolished the free-delivery service at Huron, S. Dak., on January 15, 1895, and in consequence certain carriers were separated from the service: *Held* that on the reestablishment of free-delivery service at that place the former carriers could not be reinstated. 22 Op. 663.

164. To entitle a person to reinstatement in the civil service under Rule IX by reason of the reduction of force, such reduction must be one required by law and not one caused by the exercise of a discretionary power vested in an executive officer. *Ib.*

#### XI. Miscellaneous.

165. Postal Guide.—The determination of what shall be the contents of the Postal Guide rests entirely with the Postmaster-General. 19 Op. 521.

166. Depository for mail matter.—The top or outside of a letter box, attached to a lamp-post, is not an authorized depository for mail matter the taking of which therefrom is punishable under section 5469, Revised Statutes. 17 Op. 524.

167. *Same.*—The Postmaster-General cannot by an order to letter carriers directing them in regard to the collection of papers which they may find upon the outside of letter boxes, make the tops of those boxes authorized depositories for mail matter. *Ib.*

168. Use of telegraph in the postal service.—The Post-Office Department has no power, under existing laws, to make contracts for the transmission of intelligence by telegraph for the general public as a part or branch of the postal service. 19 Op. 650.

169. *Same.*—Mail matter, as defined by statute, does not include telegraphic correspondence as such; nor does the power given the Postmaster-General to contract for carrying the mail include authority to contract for sending messages by telegraph for the benefit of the people at large. *Ib.*

170. The Attorney-General is not at liberty and has no power under the law to express an opinion to the Postmaster-General on the question whether a certain publication is within the description of matter which the statute denominates "second class," on the ground that it is a pure question of fact which it is the province of the Postmaster-General to decide. 20 Op. 384.

CLASSIFICATION OF POSTAL SERVICE. *See* 170.

CANCELING INK. *See* 130.

DIRECTIONS ON MAIL MATTER. *See* 110.

DISCONTINUANCE OF SERVICE. *See* 81.

SURETY LIABILITY OF, DISHONEST POSTAL CLERK. *See* 48-51.

POSTAL GUIDE. *See* 165.

SPECIAL AGENTS. *See* 56, 57.

OBSTRUCTION OF MAIL TRAINS. *See* MAILS. *See also* OCEAN MAIL SERVICE; PHILIPPINE ISLANDS, 40-43; TREATIES AND CONVENTIONS, IV; LOTTERY.

**POSTMASTER-GENERAL.**

See POSTAL SERVICE, II, a.

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**POSTMASTERS.**

See POSTAL SERVICE, II, b.

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**POST-OFFICE DEPARTMENT.**

1. **Contracts for Postal Guide.**—A contract for furnishing the Post-Office Department with copies of the Postal Guide, under the act of March 3, 1881 (21 Stat. 385, 412), making an appropriation for "publication of copies" thereof, does not come within the provisions of section 3709, Revised Statutes, and the Postmaster-General is not required to advertise for proposals previously to making such a contract. 17 Op. 84.

2. **Same.**—The object of that section, in requiring advertisement for proposals before making purchases and contracts for supplies, is to invite competition among bidders, and it contemplates only those purchases and contracts where competition as to the article needed is possible, which is not the case with the Postal Guide. *Ib.*

3. **Same.**—The determination of what shall be the contents of the Postal Guide rests entirely with the Postmaster-General. 19 Op. 521.

4. **Award of coal contract where member of the firm is an officer of the Department.**—Section 412, Revised Statutes, does not prohibit the Postmaster-General from awarding a contract for furnishing coal for his Department to a firm, it being the lowest bidder, one of the members of which is an officer of that Department; but if the contract was one for "carrying the mail," it would be clearly within the general prohibition of that section. 24 Op. 557.

5. **Same.**—Nor does section 1783, Revised Statutes, prevent the awarding of such contract to the firm referred to if the officer does not "act as an officer or agent of the United States" with reference to the purchase of the coal. That section, being quasi-penal in character, must be strictly construed; and, under such construction, a partner can not be held to be

an "agent," for he is a principal, and the act is essentially the act of principals. *Ib.*

6. **Same — Administrative discretion.**—While there is no statute forbidding the Postmaster-General from awarding the contract to such a firm, he is under no legal obligation to do so. As the question is one of administrative judgment and discretion, the Attorney-General is without authority or obligation to express an opinion with reference to it. *Ib.*

7. **The adjustment of accounts for expenditures of the Post-Office Department under the legislative, executive, and judicial appropriation acts may be performed by such accounting officers in the Treasury Department as the Secretary of the Treasury may assign to that duty.** It is not required by statute that this duty shall be performed by the Sixth Auditor. 19 Op. 30.

8. **The accounts which the Sixth Auditor is required to audit under section 277, Revised Statutes, etc., are of a fiduciary character, dependent upon the discretion of the Postmaster-General under authority of law, and generally refer to the postal service.** *Ib.*

9. **Telegraph.**—The Post-Office Department has no power, under existing laws, to make contracts for the transmission of intelligence by telegraph, for the general public, as a part or branch of the postal service. 19 Op. 650.

10. **Secret agents.**—The confidential agents formerly employed in the free-delivery division of the Post-Office Department, and designated secret agents, did not become classified employees of the departmental service within Rule III of the civil-service rules promulgated May 6, 1896. 21 Op. 407.

11. **Postal Laws and Regulations.**—The act of March 3, 1891 (26 Stat. 880), appropriating money for a new edition of the Postal Laws and Regulations, does not authorize the Postmaster-General to make an allowance to an officer of his Department whom he may designate for the preparation of that publication. 20 Op. 221.

12. **Records of the postal department of the late Confederate States.**—The Postmaster-General advised that he may act favorably toward the acquisition of certain records and books of the postal department of the late Confederate States, the purchase of which is authorized by the act of March 3, 1891 (26 Stat. 1079),

and several ways suggested in which they might be of value to the United States. 20 Op. 260.

13. The Postmaster-General has no authority to detail a registry clerk from the Washington post-office on detached service at the White House; and the accounting officers of the Treasury having refused to allow credits to the postmaster for salary paid such clerk for the period covered by the detail, that officer must be remitted to Congress for an appropriation for his relief. 25 Op. 302.

POSTMASTER-GENERAL. *See* POSTAL SERVICE, II, a.

CLERKS AND EMPLOYEES IN POST-OFFICES. *See* POSTAL SERVICE, II, c.

POSTMASTERS. *See* POSTAL SERVICE, II, b.

LOTTERIES. *See* LOTTERY.

LEASE OF POST-OFFICE BUILDINGS. *See* PUBLIC BUILDINGS, 24.

BIDS AND CONTRACTS IN REGARD TO THE POSTAL SERVICE. *See* POSTAL SERVICE, III, b.

#### POTOMAC RIVER AND FLATS.

*See* NAVIGABLE WATERS, 72-74.

#### POTTAWATOMIE INDIANS.

ELLIS CONTRACT—ATTORNEYS' FEES. *See* INDIANS, 128-134.

#### POWER OF ATTORNEY.

1. A power of attorney given to collect a claim against the Government, with an agreement that the donee of the power shall receive "a sum equal to 50 per cent of the amount allowed" on the claim, is not a power coupled with an interest, and is revocable. 19 Op. 483.

2. The power having been given to a firm, one of the members of which has since died, whereby the firm became dissolved, such power can not be executed by the surviving members. *Ib.*

3. Under the circumstances stated, the power should not be recognized. *Ib.*

4. "The word 'irrevocable' in the power of attorney is not conclusive. It is the general rule that a principal can revoke the power, except in cases where the power is coupled with a sufficient interest, although the power be in express terms declared to be 'exclusive' or 'irrevocable.' (Mechem on Agency, secs. 204, 207, and cases cited.) *See also id.*, section 209, as giving reasons for the rule." 19 Op. 484.

5. If a power of attorney, signed by the individual members of a firm as well as in the firm name, confers explicit authority upon one of its members to use the partnership name in signing entries and executing certain customs bonds, acts performed in compliance with such authorization are obligatory upon the firm. 20 Op. 311.

6. A power of attorney is an instrument by which the authority of one person to act in the place of another, as attorney in fact, is set forth. 22 Op. 218.

*See also* CONTRACTS, 132-133; INDIANS, 129.

#### PRACTICE.

DEPARTMENTAL. *See* EXECUTIVE DEPARTMENTS, III; STATUTORY CONSTRUCTION, 10-24.  
*See also* LETTERS ROGATORY.

#### PREFERMENT.

OF HONORABLY DISCHARGED SOLDIERS. *See* CIVIL SERVICE, V; DEPARTMENT OF COMMERCE AND LABOR, 26-28.

#### PREMIUMS.

1. The appropriation for special speed premiums earned by certain naval vessels, made by the act of July 26, 1894 (28 Stat. 123, 140), is not limited in its application to premiums earned prior to January 1, 1894. 21 Op. 84.

2. The contract with the Pneumatic Gun Carriage and Power Company for the construction of a disappearing gun carriage, under the act of August 1, 1894, makes no provision for the payment of a premium and does not bind

the Government beyond the amount appropriated. 21 Op. 457.

3. The Secretary of War is not authorized by the act of August 1, 1894 (28 Stat. 214), providing for the purchase of a 10-inch pneumatic disappearing gun carriage upon the same conditions relative to payments, etc., as are embodied in the contract for the Gordon carriage to enter into a supplemental contract for the payment of a bonus or premium for each shot per hour the carriage is capable of sustaining above the number required by the original contract, for the reason that the whole amount appropriated for the pneumatic carriage was expended in the original contract, and there is no authority to contract for further expenditures. 21 Op. 495.

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#### PRECEDENCE OF COMMAND.

*See* ARMY, 152.

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#### PREEMPTION.

*See* PUBLIC LANDS, II.

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#### PRESIDENT.

- I. Appointment, 1-34.
- II. Army, 35-40.
- III. Court-Martial, 41-43.
- IV. Cuba, 44-47.
- V. Hawaii, 48-49.
- VI. Indians, 50-54.
- VII. Naval Officers, 55-57.
- VIII. Panama, 58-65.
- IX. Pardoning Power, 66-78.
- X. Porto Rico, 79-80.
- XI. Miscellaneous, 81-115.

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#### I. Appointment.

1. Temporary recess appointments.—When an office is created by a law taking effect during a session of the Senate, and no nomination is made thereto, the original vacancy thus existing may be filled by the President during the

ensuing recess of the Senate by a temporary appointment. 18 Op. 28.

2. Same.—The power of the President to fill vacancies in office by temporary appointment, derived under section 2, Article II, of the Constitution, comprehends all vacancies that may happen to exist in a recess of the Senate, irrespective of the time when such vacancies first occur. 18 Op. 29.

3. Same.—A vacancy in an office which happens during a session of the Senate, but remains unfilled until a recess of the Senate occurs, may be filled by the President during such recess by a temporary appointment. 19 Op. 261.

4. Same.—The rule is the same in the case of a new office which is not filled during the session in which it was created. The President may fill the original vacancy existing therein by a temporary appointment made during the recess of the Senate. *Ib.*

5. Same—Salary postponed until confirmation by Senate.—An office which has become vacant during a session of the Senate may be filled during the next ensuing recess of the Senate by a temporary appointment by the President; but by section 1761, Revised Statutes, payment of the salary of the appointee, in such cases, is postponed until he has been confirmed by the Senate. 17 Op. 521.

6. Appointment during holiday adjournment.—The President is not authorized to appoint an appraiser at the port of New York during the current holiday adjournment of the Senate, which will have the effect of an appointment made in the recess occurring between two sessions of the Senate. 23 Op. 599.

7. Same—Distinction between an appointment and a nomination.—There is no distinction between an appointment and a nomination other than the fact that the President nominates for appointment when the Senate is in session, and appoints when he fills a vacancy temporarily during the recess of the Senate. *Ib.*

8. Same—Distinction between a recess of the Senate and an adjournment.—The recess of the Senate during which the President shall have power to fill a vacancy that may happen (Const., Art. II, sec. 2, clause 3) means the period after the final adjournment of Congress for the session and before the next ses-



sion begins; while an adjournment during a session of Congress means a merely temporary suspension of business from day to day, or for such brief periods of time as are agreed upon by the joint action of the two Houses. *Ib.*

**9. Ad interim appointments—Ten-day limit.**—Under sections 177, 178, 179, and 180, Revised Statutes, the President has power to fill temporarily (by an appointment *ad interim*, as there prescribed), a vacancy occasioned by the death or resignation of the head of a Department, or of the chief of a bureau therein, for a period of ten days only. When the vacancy is thus temporarily filled once for that period, the power conferred by the statute is exhausted. It is not competent for the President to appoint either the same or another officer to thereafter perform the duties of the vacant office for an additional period of ten days. 16 Op. 596.

**10. Same.**—Sections 177, 178, 179, and 180, Revised Statutes, considered with reference to the power of the President to make *ad interim* appointments, and opinion of Attorney-General Devens (16 Op. 596-7) concurred in. 17 Op. 530.

**11. Temporary appointments—Ten-day limit.**—Section 180, Revised Statutes, providing that vacancies occasioned by the death or resignation of an officer of an Executive Department must not be temporarily filled for a longer period than ten days, applies as well where they are filled (under sections 177 or 178, Rev. Stat.) without action by the President, as where they are filled (under section 179, Rev. Stat.) by his authority and direction. 17 Op. 535.

**12. Same.**—The discretionary power given the President by section 179, Revised Statutes, may be exercised after the vacancy has already been supplied under the operation of either of the two preceding sections, and in that case the ten days' limitation is to be computed from the date of the President's action. *Ib.*

**13.** Where there is a vacancy in the head of a Department, it can not be temporarily filled for a longer period than ten days, either by operation of law or by designation of the President. Section 180, Revised Statutes. 20 Op. 8.

**14.** The view expressed in 17 Op. 535, that twenty days may be taken to fill such vacancy by allowing the statutory occupation of the

office for ten days, followed by a designation by the President for an additional ten days, is not accepted. *Ib.*

*See also* OFFICE AND OFFICERS, II.

**15. Temporary recess appointments.**—The President has the right under the Constitution, and impliedly under section 181, Revised Statutes, to make a temporary appointment, designation, or assignment of one officer to perform the duties of another in the case of a vacancy caused by death, disability, or otherwise, during the recess of the Senate, and such temporary appointment, designation, or assignment is not limited by law to any particular period. 25 Op. 258.

**16. Suspension of collector of internal revenue.**—The President has the undoubted right during a recess of the Senate, to suspend from office a collector of internal revenue, with or without cause, and to designate someone else to perform the duties of that office (sec. 1768, Rev. Stat.). 18 Op. 318.

**17.** Under the law at present in force assistant engineers in the Revenue-Cutter Service should be appointed by the President with the concurrence of the Senate. 17 Op. 532.

**18. Power of appointment.**—The general rule is that where there is no express enactment to the contrary, the appointment of any officer of the United States belongs to the President by and with the advice and consent of the Senate. *Ib.*

**19.** Congress can not assume the power to require the President and the Senate to exercise their appointing power. 18 Op. 18, 23.

**20. Same.**—A bill which imposes, or attempts to impose, upon the President, a duty to appoint a person designated therein, is without any support in the Constitution. It is an assumption of an implied power which is not based upon any express power, and clearly invades the constitutional rights of the President. 18 Op. 18, 27.

**21.** The appointment of the assistant collector at the port of New York (who was formerly employed by the collector with the approval of the Secretary of the Treasury) should now by virtue of the effect of section 5596, Revised Statutes, be made by the President, with the advice and consent of the Senate. 18 Op. 98.

**22. Honorary Commissioners to the Inventions International Exposition at London.**—The President can not appoint an honorary com-

missioner to the "Inventions International Exposition" at London, such office not existing by virtue of any law of the United States. 18 Op. 171.

23. The office of chief examiner in the Civil Service Commission, created by the act of January 16, 1883 (22 Stat. 403), is to be filled by appointment by the President, with the advice and consent of the Senate, since that officer comes within the terms "all other officers of the United States," in clause 2, section 2, Article II, of the Constitution. 18 Op. 409.

*See also* CIVIL SERVICE 48, 49.

24. The President can appoint to office only those who are eligible under the Constitution. His appointment of one not eligible is a nullity. 21 Op. 211.

25. When Congress, in pursuance of its authority under the Constitution, sees fit to give the sole power of appointment to the President, it does so by language appropriate to that end, such as the unqualified phrase "may appoint" in section 1680, Revised Statutes; and, on the other hand, when Congress means the appointment to an office established by law to be made by and with the advice and consent of the Senate, the intention to that effect is specifically shown by the language used. 23 Op. 137, 138.

26. Reappointment of Rev. Charles M. Blake as post chaplain.—It is not competent for the President, with the concurrence of the Senate, now (in May, 1881) to reappoint Rev. Charles M. Blake a post chaplain in the Army as of the 28th day of September, 1878, so as to entitle him to pay from that date. 17 Op. 97.

27. The President may appoint the officers of the line and staff of the Navy authorized by the act of May 4, 1898 (30 Stat. 369), without the advice and consent of the Senate. 22 Op. 82.

28. Same—Signature of the President to the commission.—A commission issued pursuant to the foregoing act should show upon its face that it is the commission of the President, but his actual signature is not necessary. The document should, however, declare the act to be that of the President, performed by the head of the Navy Department as his representative. *Ib.*

29. Regimental officers of such regiments as may be formed by contributions of companies

from two or more States are to be appointed by the President of the United States, under the constitutional provisions which make him Commander in Chief of the Army and Navy and which authorizes him to appoint all officers of the United States whose appointment is not otherwise provided by law. 22 Op. 135.

30. If a battalion is made up of companies contributed by two or more States the officers of the battalion as such must be appointed by the President. 22 Op. 147.

31. Appointment of a captain in the Quartermaster's Department—Confirmation by Senate not necessary.—It being the intention of Congress, as expressed in the sixteenth section of the act of February 2, 1901 (31 Stat. 751), not to require confirmation of appointments in the grade of captain in the Quartermaster's Department, the appointment of Captain A, of that department, on June 14, 1901, was not a recess appointment, the concurrence of the Senate was not necessary, and the action of the President alone was final and complete. 23 Op. 574.

32. Subsequent vacancies—Promotion.—The only vacancy which the President is authorized to fill under sections 16 and 26 of that act is an original vacancy. After such vacancy has been filled there is no longer an original vacancy in that particular place, and any subsequent vacancy must be filled by promotion or by detail. *Ib.*

33. Appointment of Chinese secretary.—The President is authorized to sign the commission of the Chinese secretary, whose appointment is authorized under the act of April 4, 1900 (31 Stat. 60), in the same manner as he does those of other interpreters who are not confirmed by the Senate. 23 Op. 136.

34. Appointment of student interpreters at legation to China.—The President is authorized, under the provisions of the diplomatic and consular appropriation act of March 22, 1902 (32 Stat. 78), to appoint the ten student interpreters at the legation to China therein provided for, without sending their names to the Senate for confirmation. 24 Op. 52.

## II. Army.

35. Power of the President under the act of July 15, 1870 (16 Stat. 319), to drop an

officer from the rolls of the Army, considered. 17 Op. 13.

36. *Same.*—Neither the act of March 3, 1865 (13 Stat. 487), nor that of July 13, 1866 (14 Stat. 90), applies to cases expressly and specifically provided for by section 17 of the act of July 15, 1870 (16 Stat. 319). *Ib.*

37. **Assignment of enlisted men notwithstanding additional lieutenants remain unassigned in other corps.**—The President has authority to assign enlisted men of the Army, who have passed the examination as candidates for commissions, to vacancies that may exist in any corps or arm of the service in which they have been commissioned, notwithstanding the fact that additional lieutenants remain in other corps unassigned. 21 Op. 491.

38. **The Secretary of War is the regular constitutional organ of the President for the administration of the military establishment of the nation, and as such, the rules and orders publicly promulgated through him must be received as acts of the Executive, and are binding upon all within the sphere of his legal and constitutional authority.** 22 Op. 54.

39. **The President should not concede that the offense of an officer found guilty of making false statements to the Secretary of War for the purpose of deceiving that officer is either trivial in its nature, as being merely against good order and military discipline, or other than an offense "unbecoming an officer and a gentleman."** 18 Op. 113, 118.

40. **The President is not empowered under the provisions of section 6 of the act of April 22, 1898 (30 Stat. 362), to authorize the organization of companies, battalions, or regiments possessing special qualifications from the nation at large, beyond the number of 3,000 men in the aggregate.** 22 Op. 161.

### III. Court-Martial.

41. **Approval of proceedings, etc.**—Where the approval of the proceedings, findings, and sentence of a court-martial by the President is attested by an entry on the record signed by the Secretary of War, this is sufficient evidence of such approval. 17 Op. 397. (But see NOTE. 17 Op. 399.)

42. **The President has no power to review the proceedings of a court-martial and annul its sentence where the court was legally con-**

stituted, the case within its jurisdiction, and the sentence approved by the proper reviewing authority and carried into execution. 20 Op. 297.

43. **Order of one President rescinding an unexecuted order of a preceding President removing certain disabilities.**—Where an order of one President removing the disabilities and ordering the honorable discharge of an army officer who had been sentenced by court-martial to dishonorable discharge was not executed but was subsequently rescinded by a succeeding President, the original order, being executory and revocable before execution, was completely annulled thereby. 17 Op. 436.

*See also* 55.

### IV. Cuba.

44. **Payment of Cuban soldiers.**—For the purpose of disbanding the insurgent forces in Cuba, the President is authorized to pay some or all of the soldiers of such forces either out of the revenues of the island or out of the emergency fund of \$3,000,000 provided by the act of January 5, 1899 (30 Stat. 772). 22 Op. 301.

45. **The President is authorized to do whatever he finds necessary or expedient for the proper administration of government in Cuba, having in view the pacification of the island and the establishment of order and industry.** *Ib.*

46. **Disposal of mining rights in Cuba.**—The President, by virtue of his constitutional authority as Commander in Chief of the Army and Navy, has adequate power to use and make disposition of property in Cuba formerly belonging to the Crown of Spain or subject to the imperial prerogative, and this includes the right to dispose of mining or other property formerly belonging to the Spanish Crown. 23 Op. 222.

47. *Same.*—If he desires to do so, the President can authorize the military governor of Cuba to make grants of mining rights, but whether such power should be exercised is a question involving important and delicate considerations. *Ib.*

### V. Hawaii.

48. **Public lands of Hawaii.**—The President is authorized, under section 91 of the organic

act of the Territory of Hawaii (31 Stat. 159), to take such of the public lands of Hawaii as he deems proper for the uses and purposes of the United States. 24 Op. 600.

**49. Suspension of Hawaiian registers.**—An order of the Executive suspending the issuance of Hawaiian registers would be a legal exercise of power under the resolution of Congress annexing Hawaii. 22 Op. 578.

#### VI. Indians.

**50. Compensation for Indian lands taken by railroad.**—The President has power to direct, by an executive order, the manner in which shall be ascertained and determined the compensation for property taken or destroyed in the construction of the Missouri, Kansas and Texas Railway through the reservation of the Chickasaw and Choctaw tribes of Indians. 17 Op. 265.

**51. Indian reservation—Creation of from public domain within a State.**—The President has power to make a reservation for occupation by Indians from public domain lying within the limits of a State. 17 Op. 258.

**52. Same.**—The power of the President to set apart a portion of the public domain for the exclusive occupancy of Indians does not include the case of a reservation for Indians not born or commorant in the United States. 18 Op. 557.

**53. Payment of Indian depredation judgments.**—The President is not charged with any power or duty of approval or disapproval respecting the payments of Indian depredation judgments from annuities and property of Indians or from appropriations on their account, but all authority and discretion in the premises are vested in the Secretary of the Interior. 21 Op. 131.

**54. Indian allotment lands—Extension of trust patents to.**—The allotment act of February 8, 1887 (24 Stat. 388), does not contemplate that the President may extend the period of twenty-five years as to all trust patents issued to Indian allottees of land, but only that such extension may be made in particular cases, in the discretion of the President. 25 Op. 483.

#### VII. Naval Officers.

**55. Reconsideration of an advancement of naval officer made by predecessor.**—Where, under the provisions of section 1506, Revised Statutes, an officer was advanced in numbers by the President with the advice and consent of the Senate, for eminent and conspicuous conduct in battle or extraordinary heroism, such action of the President and Senate is conclusive upon the Executive Department of the Government, and is not subject to reexamination or revision by a succeeding President. 17 Op. 76.

**56. Selection in promotion of naval officers on retired list.**—The word "entitled" in section 1461, Revised Statutes, can not be construed as giving to the President the right of selection in determining who are and who are not entitled to promotion on the retired list of the Navy. 17 Op. 36.

**57. Nomination for advancement.**—The President has power to nominate for advancement, and to submit such nomination to the Senate for confirmation, temporary officers of the Navy recommended by the Sicard Board for advancement for especially meritorious services, although at the time of such nomination such officers may have been honorably discharged from the naval service. Such nomination is in effect, if approved by the Senate, a *nunc pro tunc* advancement of the officer. 23 Op. 413.

#### VIII. Panama.

**58. Panama Canal project, expenses incident to.**—The President is authorized by section 5 of the Atlantic and Pacific canal act of June 28, 1902 (32 Stat. 481, 483), to provide by proper order for carrying into effect certain recommendations of Admiral Walker, and direct the payment of expenses necessarily incurred in accomplishing the purposes of that act, to wit, the support of Major Black's party on the Isthmus, the maintenance of an office in Washington to supervise his work, receive his reports, preserve records, etc., of the old Isthmian Canal Commission, and the storage of certain machinery, boats, etc., at Greytown. 25 Op. 54.

**59. Panama Canal funds, deposit of in bank.**—Section 5 of the act of June 28, 1902 (32 Stat. 483), appropriating \$10,000,000 for use in the construction of the Panama Canal, does not authorize the President to deposit \$1,500,000 of that sum with the International Banking Corporation of New York, upon the condition that the bank will maintain the new coinage of the Republic of Panama at its legal parity with gold, supply the Isthmian Canal Commission with said coinage, and sell foreign and domestic exchange at reasonable rates—a deposit upon such conditions not being an incident of the financial operations to be carried on for the Government by the bank, but a distinct deposit of public money with a private bank for its own purposes. 25 Op. 484.

**60. Same.**—The President may enter into a similar contract with that company which would not involve the deposit of the money in question, but provide for payment, out of the sum appropriated, for the services which it is desired to have the bank perform. *Ib.*

**61. Panama Canal—Authority to make contracts for construction of.**—The President is authorized under existing law to make contracts for the construction and completion of the Panama Canal in excess of the appropriation at present available, so long as such contracts do not involve the Government in the ultimate expenditure of moneys for its construction and completion in excess of the amount designated in section 5 of the act of June 28, 1902 (32 Stat. 483), limiting the total cost of the canal. 25 Op. 557.

**62. Same.**—The authority thus granted by the act of June 28, 1902, remains unaffected and unimpaired by the provision in the act of December 21, 1905 (34 Stat. 5), prohibiting the expenditure of any money for the construction of such canal "except in accordance with appropriations made by Congress." *Ib.*

**63. Same.**—The phrase "no money shall be expended except in accordance with appropriations made by Congress," as used in the act of 1905, means nothing more than that no money shall be expended in excess of appropriations made by Congress. *Ib.*

**64. Panama railroad bonds—Power to redeem.**—The President has the power under

section 5 of the act of June 28, 1902 (32 Stat. 483), providing for the construction of a canal connecting the waters of the Atlantic and Pacific oceans, to turn over to the Panama Railroad Company money sufficient to redeem certain bonds of that company, recently sold to raise money to pay for necessary improvements to the railroad. 25 Op. 550.

**65. Goods shipped to Panama or Colon destined ultimately for the Canal Zone.**—The effect of the order of the President of December 3, 1904, is to prevent the direct shipment of goods, wares, and merchandise into the Canal Zone; and distilled spirits withdrawn for shipment to Panama or Colon, although ultimately to go to the Canal Zone, are withdrawn for shipment to a foreign country within the letter and spirit of the statutes. 25 Op. 324.

#### IX. Pardoning Power.

**66. Court-martial—Restoration.**—C, a lieutenant-commander in the Navy, was sentenced by a court-martial to suspension for one year, and to retain his then present number on the list of lieutenant-commanders for that time. The sentence having been executed, he applied to be restored to the number on said list which he thereby lost: *Held* that the restoration could not be effected by the President otherwise than by a pardon. 17 Op. 31.

**67. Same—Effect of pardon.**—The punishment imposed (loss of numbers), being a continuing one, is still subject to the pardoning power, which, when exercised, would have the effect to restore the officer to his former rank according to the date of his commission. *Ib.*

**68. Contempt of court.**—The President has power to grant a pardon to a prisoner undergoing punishment for a contempt of court. 19 Op. 476.

**69. General pardon or amnesty.**—The President has the constitutional power, without Congressional authority, to issue a general pardon or amnesty to classes of offenders, including persons in Utah guilty of polygamy and unlawful cohabitation, etc. 20 Op. 330.

70. *Same*.—The pardoning power of the President is absolute, and not subject to legislative control. *Ib*.

71. *Same*.—The question of the President's pardoning power reviewed and the authorities collated. Various proclamations of general amnesty appended. *Ib*.

72. **Utah — Unlawful cohabitation.**—The President's constitutional pardoning power covers the case of the offense in Utah of unlawful cohabitation. This power is absolute and not subject to legislative control. 20 Op. 668.

73. The word "amnesty" in the Edmunds Act of March 22, 1882 (22 Stat. 30), was used advisedly with intent to indicate that the President might, by act of Executive clemency, embrace a whole class of offenders, instead of dealing with each case separately. *Ib*.

74. **Misdemeanor.**—If the action of the President on an application for a pardon for an offense styled by the laws of the United States a misdemeanor, depends simply on the question of necessity for pardon, such necessity exists, unless the applicant is to be prevented from freely changing his residence under penalty of losing his rights of citizenship thereby, for the reason that in some of the States a person convicted of a misdemeanor loses his right to vote, to sit as juror, etc. 21 Op. 242.

75. Congress has no power by legislation to abridge the effect of the President's pardon. 22 Op. 36.

76. A person convicted of desertion from the military service and afterwards pardoned by the President, under section 1118, Revised Statutes, would be restored by reason of the pardon to all the rights and privileges of a citizen which he had anterior to such conviction. *Ib*.

77. While the President's pardon restores a criminal to his legal rights and fully relieves him of the disabilities legally attaching to his conviction, it does not destroy an existing fact that his service was not faithful and honest. *Ib*.

78. A recruiting officer has the right to reject a candidate for enlistment in the Army whose service during his previous term was not honest and faithful, notwithstanding the President's pardon of the offense. *Ib*.

*See also* PARDON.

## X. Porto Rico.

79. **Disbursement of Porto Rican customs revenues.**—The act of March 24, 1900. (31 Stat. 51), which directs that certain Porto Rican customs revenues "shall be placed at the disposal of the President, to be used for the government now existing and which may hereafter be established in Porto Rico, and for other governmental and public purposes therein, until otherwise provided by law," vests in the Executive the power to place the disbursement of such appropriation under the control of the "administrative authorities," instead of the "executive council." 23 Op. 450.

80. *Same*—**Erection of schoolhouses**—The President may lawfully direct that a portion of the revenues collected on importations from Porto Rico prior to January 1, 1900, be used for the purposes of erecting and equipping schoolhouses in that island. The act of March 24, 1900 (31 Stat. 51), appropriates these revenues for the benefit and government of Porto Rico. 23 Op. 329.

## XI. Miscellaneous.

81. **Acceptance of presents.**—In view of section 1784, Revised Statutes, the President can not properly accept presents from persons in the public service. 25 Op. 46.

82. **Appropriations—Pago Pago Harbor, Samoa.**—The President may lawfully use such part of the appropriation of \$500,000 provided in the act of February 26, 1889 (25 Stat. 699), in making and executing contracts for the control of such property in Pago Pago Harbor, Samoa, whether by lease or purchase, as may in his judgment be necessary for the protection of the interest of the United States. 20 Op. 484.

83. **Approval of bill after Congress adjourns.**—It is competent for the President to approve within ten days any bill presented to him, although Congress may adjourn in the interim, not *sine die*, but for a longer period than ten days, exclusive of Sundays. 20 Op. 503.

84. *Same*.—Should such a bill not be signed within the ten days it would probably fail to become law. Suggested, however, that the better plan would be, in case the bill does not

meet with Executive approval, to return it vetoed to Congress when that body reconvenes. Its validity can then be determined by the courts. *Ib.*

**85. Atlantic and Pacific Railroad Company's lines—Acceptance.**—The President should approve the recommendations of the Secretary of the Interior as to the acceptance of certain sections of the railroad and telegraph lines of the Atlantic and Pacific Railroad Company. 17 Op. 251.

**86. Cables—Landing of.**—The President has the power, in the absence of legislation by Congress, to control the landing of foreign submarine cables on the shores of the United States. He may either prevent the landing, if the rights intrusted to his care so demand, or permit it on conditions which will protect the interests of this Government and its citizens. 22 Op. 13.

**87. Same.**—The Executive permission to land a cable is subject to subsequent Congressional action. *Ib.*

**88. Same.**—Under the obligation entered into by the President it is his duty to preserve, protect, and defend the Constitution, to do which he must preserve, protect, and defend those fundamental rights which flow from the Constitution itself and belong to the sovereignty it created. *Ib.*

**89. Same.**—The preservation of our territorial integrity and the protection of our foreign interests are intrusted in the first instance to the President. *Ib.*

**90. Certificate of merit—Military service.**—The President may grant a certificate of merit to an enlisted man of the Army who has distinguished himself in the service and is recommended for such certificate by the commanding officer of his regiment or by the chief of the corps to which he belongs, notwithstanding the fact that he is not in the military service at the time his case reaches the President for consideration, and, if granted the certificate, will be entitled to additional pay for the period intervening between the date of such service and the date of his discharge from the military service; but the President can not grant a certificate of merit if the recommendation therefor by the commanding officer or chief of his corps was made after the enlisted man was discharged from the military service. 24 Op. 127.

**91. Medals of honor—Military service.**—Under section 6 of the act of March 3, 1863 (12 Stat. 751), the President may present a medal of honor to an officer or private in the military service of the United States who has distinguished himself in action, notwithstanding he is not in the military service at the time the case reaches the President for consideration, provided the application or recommendation therefor was made while he was in the military service; but a medal of honor can not be awarded where the application or recommendation therefor is made after the officer or private has been discharged from the military service. 24 Op. 580.

**92. Compromise of forfeited recognizance.**—The President has no power, outside of the District of Columbia, to remit the forfeiture of a judgment on a recognizance. The power to compromise claims in favor of the United States, which includes judgments on recognizances, is vested by law in the Secretary of the Treasury with respect to all claims save those arising under the postal laws. 21 Op. 494.

**93. Fees of consuls—Inspection cards—Unofficial services.**—The President may prescribe a fee, as provided by section 1745, Revised Statutes, for the services of a consul in furnishing inspection cards to steerage passengers on vessels destined to the United States, as required by the quarantine regulations of April 1, 1903, but he has no authority to declare such a fee unofficial and to permit the consul to retain it as such. 24 Op. 672.

**94. Electoral vote—Failure to deliver certificate of the votes of any State.**—It is the duty of the Secretary of State, under the provisions of section 141, Revised Statutes, as amended by the act of October 19, 1888 (25 Stat. 613), to send a special messenger to the district judge holding the certificate of the votes of his State, in each of the four States where the messenger has failed to deliver to the President on the fourth Monday in January, 1893, the package containing the certificate of the votes of that State. 20 Op. 522.

**95. Same.**—The expression "Whenever a certificate of votes from any State has not been received," as found in the act of October 19, 1888 (25 Stat. 613), should be construed so as to read "whenever any certificate of votes

required by law from any State has not been received." *Ib.*

**96. Executive action after statute is repealed.**—Mistakes, if any, made in the execution of an act which is subsequently repealed, can not be rectified by executive action after such repeal. Therefore the President has no power to retire Lieutenant-Colonel Freudenberg with the rank and pay of colonel of infantry from the date of his first retirement, December 15, 1870. 17 Op. 60.

**97. Executive and administrative officers.**—The President has, under the Constitution and laws, certain duties to perform, among these being to see that the laws be faithfully executed; that is, that the other executive and administrative officers of the Government faithfully perform their duties; but the statutes regulate and prescribe these duties, and he has no power to add to, or subtract from, the duties imposed upon subordinate executive and administrative officers by the law. 19 Op. 686.

**98. Executive clerk may sign land patents.**—The President has power, under section 450, Revised Statutes, as amended by the act of June 19, 1878 (20 Stat. 183), to designate one of his executive clerks to sign for him, and in his name, all patents for land, etc.; and should an exigency of the public service require it, he is authorized to appoint an assistant to aid in performing that duty, so long as the exigency exists. 17 Op. 305.

**99. Influencing legislation—Order forbidding Government employees to influence legislation in their own interests.**—The order of the President of January 31, 1902, forbidding all officers and employees of the United States to influence legislation by Congress in their own interests prohibits "The Navy-Yard and Arsenal Employees' Protective Association" of Washington, from seeking to influence Congress or its committees to pass a pending bill granting an additional fifteen days' leave of absence to the employees who constitute that association. 23 Op. 637.

**100. Interference with judiciary.**—The Executive has no right to interfere with the judiciary in proceedings against persons charged with being concerned in hostile expeditions against friendly nations. 21 Op. 267.

**101. Military Academy, restoration of cadet.**—It is not within the authority of the

President, in opposition to an adverse recommendation of the Academic Board of the Military Academy, to revoke an order of the Secretary of War for the discharge of a cadet and to restore him to the Academy to take his place in the next succeeding first class. 17 Op. 67.

**102. Mount Vernon relics, restoration of to rightful owner.**—The Government having taken possession of the Mount Vernon Relics (so called) solely for their safe-keeping, and never having acquired title to them, the President has the power to return them to their rightful owner. Their restoration now is quite as much within the scope of Executive authority as has been their preservation. 23 Op. 437.

**103. Official bonds.**—The President has power to require a bond of the register of wills and the recorder of deeds of the District of Columbia, for the faithful accounting by them of the fees received by them, and he may likewise prescribe periods at which such accountings shall be had and payments made by them into the Treasury of the United States. 20 Op. 508.

**104. The President's right to call for an opinion from the Attorney-General** is not limited to questions of law. Article II, section 2, clause 1, of the Constitution provides that he "may require the opinion of the principal officer of each of the Executive Departments upon any subject relating to the duties of their respective offices." 23 Op. 360.

**105. Proclamation.**—The President has no power to issue the proclamation provided for in section 3 of the act of October 1, 1890 (26 Stat. 612), to take effect in futuro, nor has he the power to reimpose duties on one or more of five articles enumerated in said section but not on the others. In the proclamation the particular country on whose products the duties are to be reimposed should be named. 20 Op. 290.

**106. Penitentiary.**—The President is not authorized to approve a selection of public lands for penitentiary purposes by the State of Colorado under section 9 of the act of March 3, 1875 (18 Stat. 474), as the failure by the designated authorities of a State to select and locate lands within the time named by an act providing for such selection renders the grant inoperative. 21 Op. 462.



**107. Public domain, restoration to.**—The President can not restore to the public domain land reserved therefrom for the use of the Navy Department. It requires Congressional action. 21 Op. 120.

**108. Rock Creek Park, acquisition of title—Reasonableness of prices.**—Where an appropriation for acquiring title to land for a public park is limited to \$1,200,000, and the law requires the President to decide that the prices to be paid for various parcels of land are reasonable, and the commission appointed by the act has presented for his decision a report of appraisers in condemnation that would make the cost of the park considerably exceed that amount, it would not be lawful for the President to decide that the prices as submitted are reasonable. 20 Op. 326.

**109. Same—Valuation.**—The President is authorized to determine, parcel by parcel, whether the valuation of the lands embraced within the reduced area of the contemplated Rock Creek Park, as recommended by the Rock Creek Park Commission, bringing the total cost within the amount appropriated by the act of September 27, 1890 (26 Stat. 492), is reasonable or unreasonable. 20 Op. 377.

**110. Same.**—The validity and regularity of the proceedings culminating in the above recommendation are judicial questions, for the determination of the court and not for the Executive. *Ib.*

**111. Quarantine regulations.**—The President is authorized by the act of March 27, 1890 (26 Stat. 31), in the event he is satisfied that cholera, yellow fever, smallpox, or plague exists in any State or Territory or in the District of Columbia, to adopt and enforce such rules and regulations as may be necessary to prevent its spread into another State or Territory or into the District of Columbia, and this notwithstanding the provisions of the act of February 15, 1893 (27 Stat. 450). 22 Op. 106.

**112. Remission of forfeiture.**—Outside of the District of Columbia the President has no power to remit the forfeiture of a judgment or a recognizance. 21 Op. 494.

**113. Remission of forfeiture—Prize of war.**—The President has authority to grant remission of forfeiture in cases of prizes of war after the vessels have been condemned, but before the prize money has been deposited in the

Treasury of the United States. His jurisdiction in these matters rests upon his pardoning power, as defined in section 2, Article II, of the Constitution. 23 Op. 360.

**114. Same.**—Congress can not abridge, modify, or condition the exercise of this power. It is coextensive with the punishing power and extends to cases of penalties and forfeitures, with a limitation that a fine or penalty may not be remitted if the money has been paid into the Treasury. *Ib.*

**115. Tonnage dues.**—The President has no authority to reverse the decision of the Commissioner of Navigation so as to adjust the claims of Sweden and Norway for the return of tonnage dues alleged to have been erroneously exacted. 20 Op. 367.

**AUTHORITY TO EXTEND FORT MISSOULA MILITARY RESERVATION.** *See* RESERVATIONS AND PARKS, 12.

**AUTHORITY TO REMOVE CONVICT FROM ONE PRISON TO ANOTHER.** *See* CONSULAR COURTS. **APPEAL TO PRESIDENT IN REGARD TO SURVEY OF A PRIVATE LAND CLAIM.** *See* DEPARTMENT OF THE INTERIOR, 15.

**INDIANS, LEASE OF INDIAN LANDS.** *See* INDIANS, III, e.

**PROTECTION OF INDIAN ALLOTTEES.** *See* INDIANS, III, a, 56.

**USE OF MILITARY FORCES.** *See* INDIAN TERRITORY.

**TONNAGE TAXES, SUSPENSION OF.** *See* SHIPPING, III, b.

*See also* CABLES; CIVIL SERVICE, VI; HEALTH AND QUARANTINE, 7; EXPOSITIONS AND FAIRS, 21, 30; PARDON; PRISONS AND PRISONERS, 1.

## PRINTING.

**PRINTED MATTER COMING BY MAIL FROM FOREIGN COUNTRIES.** *See* CUSTOMS LAW, 237. *See also* PUBLIC PRINTING.

## PRISONS AND PRISONERS.

**1. Taking testimony of prisoners.**—The President has no power, in the absence of a treaty provision, to extend to a foreign government the privilege of taking the testimony of prisoners, excepting when they are con-

fined in prisons of such of the Territories as are not invested with authority to regulate the prisons within their limit, and in the prisons of the District of Columbia; and then only, as to the former prisons, with the concurrence of the Attorney-General, and as to the latter prisons, with the concurrence of the supreme court of the District. 17 Op. 565.

2. **Same.**—Prisoners confined to State prisons, whether under sentence of Federal or State courts, are subject exclusively to the government of rules and regulations prescribed by the several States. *Ib.*

3. **Spanish prisoners—Transportation of.**—Under the treaty of 1898 with Spain the United States obligated itself to convey from the Philippine Islands to Spain only such Spanish soldiers as were actually made prisoners of war either by the United States or by the insurgents. 22 Op. 383.

4. **Troops remaining under arms, under the control and direction of Spanish officers, are to be removed at the expense of the Spanish authorities.** *Ib.*

5. **A prisoner sentenced by a court-martial to confinement in a penitentiary of the United States should not be turned over to a marshal, but should be conducted to the prison by the proper officer of the Department of War.** 21 Op. 204.

6. **Philippine Prison—Confinement of Filipino convicted in Consular Court in China.**—There is no warrant of law for confining in a Philippine prison a Filipino sailor convicted in the United States consular court at Shanghai, China, of the murder of a Chinaman on the U. S. Army transport *Listrom*, and sentenced to fifteen years' imprisonment. 24 Op. 549.

7. **Same.**—Section 5546, Revised Statutes, as amended by the act of March 3, 1901 (31 Stat. 1451), or without the amendment, contains nothing to indicate that Congress considered the home or domicile of a convict in providing for his confinement, or that in speaking of a "convenient State or Territory" the Philippine Islands were in contemplation. *Ib.*

#### PRIZE.

1. **American Registry.**—Under section 4132, Revised Statutes, a vessel lawfully condemned

and sold as a prize of war to an American citizen is entitled to an American registry, which is not lost by the subsequent reversal of the decree by the Supreme Court of the United States. 23 Op. 29.

2. **Same.**—The reversal of the decree of condemnation operates only upon the fund produced by the sale of the vessel, and does not disturb the title and rights of the purchasers. *Ib.*

Opinion of December 10, 1840 (3 Op. 606), distinguished. *Ib.*

3. **Prize money.**—The officers and men of the U. S. S. *Hawk* are not entitled to prize money under section 4625, Revised Statutes, for the destruction of the Spanish steamer *Alphonso XII*; as that section refers only to property actually captured, and not to property destroyed without ever having been seized or in the possession of the United States forces. 22 Op. 171.

4. **Same—Bounty.**—If at the time of her destruction the *Alphonso XII* was a ship or vessel of war in the service of Spain, then the officers and crew of the *Hawk* may be entitled to bounty under section 4635, Revised Statutes. *Ib.*

5. **Same.**—The division of prize money among vessels or between a capturing vessel and the Government must be determined by a prize court, and among the fleet officers and individual captors by the Treasury Department. 22 Op. 205.

6. **Same.**—A prize court is without jurisdiction to make distribution among individual captors except in case of captures by privateers. *Ib.*

7. **Same.**—In determining questions with reference to bounty arising under section 4635, Revised Statutes, the Secretary of the Navy is authorized: (1) To institute proceedings under a libel of information in a district court of the United States or the supreme court of the District of Columbia, sitting as a prize court; (2) to submit the case to the Court of Claims; (3) or to determine himself the question arising and award the bounty, the better view being that the questions of fact involved should be adjudicated by the proper court. *Ib.*

8. **Same.**—The Court of Claims has authority to hear and determine such questions of bounty, either as a claim founded upon a law of Congress or as one which may be trans-

mitted to it by the head of a department, under section 1063, Revised Statutes, and the act of March 3, 1887 (24 Stat. 505, 507). *Ib.*

9. Certain tobacco belonging to the Portuguese vice-consul at Gibara, Cuba, was seized by the United States and condemned as prize, together with the Spanish vessel of which it formed the cargo. It was asserted that a claim for the tobacco was not directly and formally presented owing to certain correspondence between the Departments of State and Justice and the Portuguese minister: *Held* that the precedents would have led to the condemnation of tobacco so owned, so shipped, so originating, that its condemnation was not illegal and tortious, and that the demand of this merchant, whose status was not affected by his consular character, is without substantial merit. 22 Op. 327.

10. Same—Prosecution of claims.—Prize courts are, in a sense, governed by the law of nations relating to war, and in all countries must have some, if not the same, rules concerning the manner of presenting claims. 22 Op. 327.

11. The President has authority to grant remission of forfeiture in cases of prizes of war after the vessels have been condemned, but before the prize money has been deposited in the Treasury of the United States. His jurisdiction in these matters rests upon his pardoning power as defined in section 2, Article II of the Constitution. 23 Op. 360.

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#### PRIZES.

*See* LOTTERY, 13-18.

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#### PROCEDURE.

A bill in equity will not lie against the State of Minnesota for the purpose of vacating a patent issued to that State under the swamp-land grant, on the mere ground that the land thus patented was not in fact swamp land. 19 Op. 684.

*See also* COURTS, 32.

#### PROCESS.

*See* COURTS 32; UNITED STATES, V.

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#### PROCESS AGENTS.

*See* OKLAHOMA, 8.

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#### PROCLAMATION.

*See* CUSTOMS LAW, IV, g.

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#### PRODUCTION OF RECORDS.

*See* CIVIL SERVICE, II, d; EXECUTIVE DEPARTMENTS, 36-38.

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#### PROHIBITED IMPORTATIONS.

*See* CUSTOMS LAW, VII.

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#### PROMISSORY NOTES.

*See* INTERNAL REVENUE, II, f, (2).

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#### PROMOTION.

*See* ARMY, II, b, and V; NAVY, II, b, and III, b; CIVIL SERVICE, III, e; WAR DEPARTMENT, 109-113.

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#### PROPERTY LOST IN MILITARY SERVICE.

*See* CLAIMS, I, b.

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#### PROPOSALS.

*See* CONTRACTS, I, b; EXECUTIVE DEPARTMENTS, 63-65.

## PROSECUTION OF CLAIMS.

AGAINST THE UNITED STATES. *See* CLAIMS, 66-71; EXECUTIVE DEPARTMENTS, II, d.

## PROTEST.

*See* CUSTOMS LAWS, III, c; FINES, PENALTIES, AND FORFEITURES, 6.

## PRUSSIA.

*See* CUSTOMS LAWS, 284, 285.

## PUBLIC BUILDINGS.

1. **Site for Pension Office building.**—The appropriation made by the act of March 3, 1881 (21 Stat. 448), "for the purchase of a suitable site in the city of Washington for the erection of a brick building to be used and occupied by the Pension Bureau," etc., is to be construed as applying solely to the purchase of a site. The language of the clause contains no ambiguity necessarily giving rise to the inference that Congress intended it to embrace more than its terms express. 17 Op. 63.

2. **Authority to purchase site does not include power to acquire by condemnation.**—The authority given by the act of April 11, 1882 (22 Stat. 43), "to purchase a site" for a public building to be erected at Minneapolis, Minn., does not include authority to acquire such site by condemnation under the eminent domain power of the United States. 17 Op. 509.

3. **Purchase of site and building for office of the Chief Signal Officer of the Army.**—The act of March 5, 1888 (25 Stat. 44), entitled "An act for the purchase of a site, including the building thereon, etc., for the use of the office of the Chief Signal Officer of the Army," etc., does not carry with it an appropriation of money for the objects designated therein. 19 Op. 131.

4. **No act for the erection of a public building appropriates money unless the act in express language makes appropriation therefor.**

Act of August 7, 1882 (22 Stat. 305). 20 Op. 54.

5. **United States mint building at Philadelphia.**—The act of March 3, 1891 (26 Stat. 838), providing for the erection of a public building at Philadelphia, Pa., for the use of the United States mint does not carry an appropriation. *Ib.*

6. **Site for public building at Springfield, Mo.**—The act of March 29, 1888 (25 Stat. 46), entitled "An act for the erection of a public building at Springfield, Mo.," authorizes the Secretary of the Treasury to purchase "a site," and when this is done his authority in that regard is exhausted; he is not at liberty to buy another site in addition to the first. 19 Op. 297.

7. **Same.**—As such authority is limited to a single site, so the authority derived thereunder to select and contract for the purchase of a site is likewise restricted. *Ib.*

8. **Same.**—Assuming that the contract to purchase a particular site, made with Messrs. Wooley, Porter & Hubbell, still exists, the Secretary is without authority to select a second site and contract for its purchase. *Ib.*

9. **Same.**—Should that contract become rescinded, or otherwise determined, without any actual sale taking place, the authority to select and contract for the purchase of another site would revive. *Ib.*

10. **Same.**—The obligation to pay for the property arises when a valid title thereto is conveyed and becomes vested in the United States; hence not until acceptance of the deeds tendered by the vendors. *Ib.*

11. **The proposal made by Messrs. Mooney & Ferguson to sell to the United States a site for a public building at Buffalo, N. Y.,** which property they did not own or control, upon condition that the United States institute condemnation proceedings against any part thereof that can not be secured by grant, and deduct the cost of such proceedings from the contract price, and the acceptance thereof by the Secretary of the Treasury, do not constitute a contract obligatory upon the United States. 19 Op. 269.

12. **Same.**—The Secretary can not by contract bind the Government to exercise its power of eminent domain to enable persons to sell to the Government land which they do not own. *Ib.*

13. **Limitation of cost.**—The first section of the act of April 11, 1882 (22 Stat. 43), au-

thorized a public building to be erected at Minneapolis, Minn., limiting the cost of the building, inclusive of its site, to \$175,000, and the second section of same act appropriated \$60,000 for purchase of site and toward construction of building; by act of March 3, 1883 (22 Stat. 604), an appropriation of \$60,000 was made for continuation of the building; and, by act of July 7, 1884 (23 Stat. 195), a further appropriation of \$70,000 was made for extension of site and continuation of building—the whole of the appropriations aggregating \$190,000: *Advised* that the limitation fixed by the act of 1882 as to cost of the building, etc., is not repealed by the subsequent appropriation acts, the only additional expenditure allowable being for an "extension of site." 18 Op. 79.

14. **Statutory provision for condemnation of land for buildings authorized by the 47th Congress does not include authority to acquire by condemnation site for a building authorized by 48th Congress.**—The provision in the act of March 3, 1883 (22 Stat. 605), authorizing the Secretary of the Treasury "to acquire by private purchase or condemnation the necessary lands for public buildings and light-houses to be constructed, and for which money is appropriated, including all public building sites authorized to be acquired under any of the acts of the first session of the Forty-seventh Congress," does not empower him to acquire by condemnation the site for the proposed public building authorized to be erected at La Crosse, Wis., by the act of February 28, 1885 (23 Stat. 335). 18 Op. 174.

15. **Same.—That provision is limited to lands for public buildings for which money is then (*i. e.*, by said act of March 3, 1883) appropriated, including building sites authorized to be acquired under acts of the previous session, and does not extend to other cases.** *Ib.*

16. **Same.—Statutory construction.**—A statute should not be construed as making an appropriation, or authorizing the expenditure of money, unless the language is sufficiently explicit to clearly justify it; authority for the use of the public money can not arise by inference without very clear terms requiring it. *Ib.*

17. **Location of public building at Portland, Oreg.**—While the Secretary of the Treasury has the power to erect the public building to be

built in the city of Portland, Oreg., at any point within the present limits of that city, yet it is more in accord with the intent of the act of January 24, 1891 (26 Stat. 727), to select the location in the limits of said city as they existed at the time that statute was passed. 20 Op. 320.

18. **Acceptance of Federal building site in Honolulu.**—The Secretary of the Treasury may, if authorized by the President, accept a site for a Federal building in Honolulu acquired in exchange for public land in Hawaii and assume the custody and control thereof, no objection thereto arising under section 3736, Revised Statutes, or otherwise. 24 Op. 600.

19. **Sites for Government buildings at Troy and Auburn—Condemnation.**—Under an act of the legislature of New York, passed April 2, 1885, a valid title to certain lands situated in the cities of Troy and Auburn, in that State, which have heretofore been selected for the sites of Government buildings authorized by Congress to be erected there, may be acquired by the United States by condemnation proceedings instituted in the State court pursuant to its provisions. 18 Op. 352.

20. **Same.**—The acts of Congress of March 3, 1885 (23 Stat. 348, 482), providing for the purchase of such sites, may properly be taken to authorize the acquisition thereof in any mode which is in conformity to the laws of the State. Hence where, by a law of the State, the property may be condemned and title thereto acquired under the eminent domain power of the State, recourse may be had as well to this mode of acquisition as to any other under the authority conferred by those acts. *Ib.*

21. **Public building site at Williamsport, Pa.—Condemnation.**—Title to the additional ground authorized to be purchased by the act of July 10, 1886 (24 Stat. 141), for the site of a public building to be erected in Williamsport, Pa., may be acquired by the institution of condemnation proceedings under the laws of the State of Pennsylvania, in case no agreement for the purchase thereof can be made with the owner. 18 Op. 484.

22. **Erection of temporary building at a collection port.**—The Secretary of the Treasury is not authorized to employ any part of the appropriation for collecting the revenue from customs in the erection of a temporary struc-

ture at a collection port for the purposes of the customs service. 19 Op. 607.

23. **Same.**—No building, even of a temporary character, to be used for storage purposes, can be erected at the public expense without special authority from Congress. *Ib.*

24. **Leases for post-offices.**—Certain leases of post-offices, made by the Postmaster-General without express statutory authority prior to the act of March 3, 1885 (23 Stat. 385), for terms of twenty years: *Held* not to be obligatory upon the Government. 18 Op. 215.

25. **Where the tenancy of the Government is from year to year,** it may be terminated by giving such notice as is required by the law of the State in which the property is situated. *Ib.*

26. **Disbursing agents — Public building fund—Custom-house and post-office at Philadelphia—Compensation.**—Where a person not holding any office under the United States requiring him to give bond, was appointed an agent to disburse funds appropriated to build the custom-house and post-office building in the city of Philadelphia, Pa.: *Held* that, in view of the provisions of sections 3657, 3658, and 255, Revised Statutes, his appointment was **improvidently made**; that he was not lawfully empowered to receive or disburse the public funds placed in his hands; and that, under existing legislation, he is not entitled to any compensation for his services as such disbursing agent. 17 Op. 124.

27. **Same—Maximum compensation.**—Where, under the act of March 3, 1869 (15 Stat. 312), an agent was appointed for the disbursement of money appropriated for the erection of a public building with the maximum compensation allowed by law, at that time being one-eighth of 1 per centum, and afterwards the act of March 3, 1875 (18 Stat. 415), increased the compensation for similar services to a maximum of three-eighths of 1 per centum, and the Secretary increased the compensation to one-fourth of 1 per centum: *Held* that that was all the agent was entitled to, and that the Secretary of the Treasury had a discretion as to whether or not he would allow him the full maximum compensation under the later act. 17 Op. 219.

28. **Same.**—In the absence of any special designation by the Secretary of the Treasury, the collector of customs of the district in which

a public building is being erected **should act** as disbursing agent. 19 Op. 393.

29. **Same.**—It is competent for the Secretary to designate the collector or any other bonded officer to act as disbursing agent in any such case. *Ib.*

30. **Same.**—When such building is at a place in which there is no collector, the Secretary may, in his discretion, designate a private citizen to act. *Ib.*

31. **Same.**—The various statutory provisions in force relating to disbursing agents for the payment of moneys for the construction of public buildings (secs. 3657, 3658, and 255, Rev. Stat.) considered. *Ib.*

32. **Same—State, War, and Navy Building.**—The lieutenant-colonel of the Corps of Engineers, in charge of the construction of the State, War, and Navy Building, who was directed by the Secretary of War, acting under the provisions of the act of March 3, 1875 (18 Stat. 391), to disburse the appropriations made from time to time for that building, is not entitled to compensation at the rate of three-eighths of 1 per cent upon the amount of money disbursed by him, as claimed under section 4 of the act of March 3, 1875 (18 Stat. 415), said claim being controlled by the provisions of section 1153, Revised Statutes. 19 Op. 425.

33. **Same.**—Section 1153 Revised Statutes, which makes it the duty of engineer officers in charge of any public work to disburse moneys applicable to the same, and expressly provides that such officers shall not be allowed compensation therefor, was not repealed expressly or by implication by the act of March 3, 1875 (18 Stat. 415), which limits the compensation of disbursing officers of moneys appropriated for the construction of public buildings to three-eighths of 1 per cent. *Ib.*

34. **The Secretary of the Treasury is given authority,** by section 3658, Revised Statutes, to appoint agents for the disbursement of moneys appropriated for the construction of public buildings where there is no collector of customs at the place of the location of such buildings. 25 Op. 536.

35. **Same.**—The words "the place of location of any public work," as used in that section, means some place, city, or town within a collection district, and not the whole district. *Ib.*

**36. Same.**—The doctrine announced by the Supreme Court of the United States in the case of *Bartlett v. United States* (197 U. S. 230) should not be extended beyond the particular facts in that case. *Ib.*

**37. Same.**—Sections 255, 3654, 3657, and 3658, Revised Statutes, and the acts of March 3, 1875 (18 Stat. 415), and of August 7, 1882 (22 Stat., 306), relating to the appointment of disbursing agents for the payment of moneys appropriated for the construction of public buildings, are not inconsistent, and, except as one modifies another, may all stand together. *Ib.*

**38. State acts of cession which are not a compliance with the laws of the United States—Jurisdiction.**—A State statute that the United States "shall have the right of exclusive legislation and concurrent jurisdiction" is not a compliance with an act of Congress for the erection of a building providing for exclusive jurisdiction save as to the administration of the criminal laws of the State and the service of civil process thereunder. 20 Op. 242.

**39. Same.**—A State statute that the United States shall have over land to be taken for public building "the right of exclusive legislation and concurrent jurisdiction together with the State of Louisiana" is not a compliance with the act of April 26, 1890 (26 Stat. 67), requiring a cession to the United States of jurisdiction over the site selected, for all purposes except the administration of the criminal laws of said State. 20 Op. 298.

**40. Same.**—The certificate of the governor of Wisconsin, in conformity to section 2, chapter 1, of the Revised Statutes of 1878 of the State, consenting to the purchase of certain land by the United States provided the State shall forever retain concurrent jurisdiction over any such place to the extent that all legal and military process issued under the authority of the State may be executed anywhere on such place or in any building thereon or any part thereof, and that any offense against the laws of the State committed on such place may be tried and punished by any competent court or magistrate of the State, to the same extent as if such place had not been purchased by the United States, does not satisfy the provision of section 355, Revised Statutes of the United States. 20 Op. 611.

*See also UNITED STATES, V, 69-78.*

**41. Public buildings erected on private lands.**—The United States has a right to remove or sell buildings or improvements erected or made on what was supposed to be the public domain, but which afterwards proved to be covered by a Mexican land grant, and had been subsequently patented by the owner, the laches or mistake of the Government officers in regard to the ownership of the land being no bar to the Government's right in the premises. 20 Op. 284.

**42. Same.**—An application should be made to Congress to authorize said disposition of the buildings, etc., as neither the President nor the Secretary of War has authority to dispose of the same. *Ib.*

**43. Same.**—Where land established as a military reservation includes the private claim of an individual, which was subsequently discovered and the use of the reservation discontinued, and upon the land are erected some twenty-two buildings, but in the patent issued to the claimant there was a clause reserving to the United States its rights to ownership in the buildings: *Held* that the ownership of the buildings was in the United States. 20 Op. 603.

ACQUISITION OF LAND FOR PUBLIC-BUILDING SITES. *See also UNITED STATES, V.*  
RENT OF POST-OFFICE BUILDING AT SAN JUAN, P. R. *See PORTO RICO, 52.*

#### PUBLIC CARTAGE OF IMPORTED MERCHANDISE.

*See CONTRACTS, 163.*

#### PUBLIC LANDS.

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### I. Entry.

1. **Limitation to 320 acres.**—The provision in the act of August 30, 1890 (26 Stat. 391), declaring that "no person who shall, after the passage of this act, enter upon any of the public lands with a view to occupation, entry, or settlement under any of the land laws, shall be permitted to acquire title to more than 320 acres in the aggregate under all of said laws," does not operate upon entries made prior to the date of the act. 19 Op. 704.

2. **Same.**—An applicant who, by such prior entries, has already acquired title to 320 acres is not thereby precluded from acquiring title to an additional quantity, not exceeding 320 acres, by homestead entry, timber land, or other claim under the land laws, filed subsequent to the date of the act. *Ib.*

### II. Preemption, Homestead.

3. **After entry, can not be set apart for military reservation.**—Where public land subject to homestead settlement has been duly entered under the homestead law, it thenceforth ceases to be at the disposal of the Government so long as the entry of the settler subsists. Hence it can not, while such entry stands, be set apart by the President for a military reservation. 17 Op. 160.

4. **Same—but may be reserved before payment and entry.**—Where, however, a preemption filing has been made of public lands, the land covered thereby may be set apart by the President for such reservation at any time previous to payment and entry by the settler under the preemption law. *Ib.*

*See also* 34, 37.

5. **Homestead entry of land withdrawn from preemption.**—Where a homestead entry was

made in 1884 of land lying within the indemnity limits of the Northern Pacific Railroad land grant, alleging a prior settlement thereon in 1878, which land had been in 1872 withdrawn from preemption or homestead entry for the benefit of the railroad grant, and had not since been restored to entry, and the said land was in 1883 selected by the railroad company as "lieu land:" *Held* that the land being in a state of reservation from the date of the withdrawal in 1872 until its selection by the company in 1883, was not during that period open to homestead settlement, and consequently no right adverse to the claim of the company could be acquired by a settlement made in 1878. 18 Op. 571.

6. **Same.**—When public lands have been once withdrawn by competent authority from private appropriation under the general land laws, they do not again become subject to such appropriation until restored to entry by like authority. *Ib.*

### III. Certification.

7. **Erroneous certification.**—Certification of land already covered by a homestead or preemption entry is erroneous and without authority of law. 20 Op. 224.

8. **Same.**—The act of March 3, 1887 (24 Stat. 556), is mandatory, and makes it the duty of the United States to bring a suit to restore title to the United States if the party to whom the land was erroneously certified after a prior certification does not give or procure a relinquishment or reconveyance. *Ib.*

### IV. Surveys.

9. **An appeal does not lie to the President to set aside a decision made by the Secretary of the Interior touching the correctness or validity of a resurvey of a private land claim, being the Charwin grant.** 18 Op. 31.

10. **Resurvey.**—The Commissioner of the General Land Office may, in his discretion, direct a resurvey of patented land where a substantial allegation of fraud or mistake is made, the sustaining of which will restore to the public domain land wrongfully patented, or subserve the public interest or protect the public right. 19 Op. 126.



11. **Same.**—A survey made under the circumstances stated would not be conclusive, but on allegation of fraud in the original running of the lines might, with other facts, be evidential. *Ib.*

12. **Same.**—In connection with other testimony to establish fraud or mistake in the original running of the lines, the testimony of the surveyor who reran the lines as to the facts found by him on the ground, together with the plats made by him, might be admissible as evidence to sustain an allegation of fraud or mistake. *Ib.*

#### V. Patents.

13. **Patents for mining claims.**—No legal objection exists to the practice of the Land Department, in issuing patents for mining claims upon veins or lodes, to insert in the patent a clause excepting from the grant all town-site rights in the premises where it appears that the surface ground of any such claim lies wholly or partly within the limits of a previously located, entered, or patented town site. 17 Op. 248.

14. **Signing land patents.**—The President has power under section 450, Revised Statutes, as amended by the act of June 19, 1878 (20 Stat. 183), to designate one of his executive clerks to sign for him, and in his name, all patents for land, etc.; and should an exigency of the public service require it, he is authorized to appoint an assistant to aid in performing that duty so long as the exigency exists. 17 Op. 305.

15. **Patents issued to persons who have purchased in good faith from railroads lands erroneously certified,** issuance whereof is provided for in the fourth section of the act of March 3, 1887 (24 Stat. 556), are only intended to be issued after it shall have been legally determined, in the mode prescribed in the second section, that the certification or patent to the railroad company had been erroneously issued. 19 Op. 68.

16. **Issuance of new patents.**—In the case of a voidable entry of public land upon which a patent has already issued, where the action of the board of equitable adjudication is applied for with a view to obtaining the issue of a new patent by the Commissioner of the General Land Office under section 2456, Re-

vised Statutes, a surrender of the outstanding patent should accompany the application or be made before the entry is acted upon by the board. 19 Op. 188.

17. **Cancellation of old patent.**—The outstanding patent, when surrendered, need not be canceled until after confirmation of the entry; it is sufficient if the cancellation take place previously to the issue of a new patent. *Ib.*

#### VI. College and University Land Grants.

18. **Agricultural college lands.**—Under the act of June 2, 1862 (12 Stat. 503), donating public lands to establish agricultural colleges, the State of Kansas became entitled to a certain quantity (90,000 acres) of public lands lying within her borders subject to private entry at the minimum price of \$1.25 an acre; and by the same act it was declared that if such lands are selected from those which have been raised to double minimum in consequence of railroad grants, they shall be computed at the maximum price and the number of acres diminished proportionately. Subsequently the Secretary of the Interior, pursuant to the provisions of the railroad land-grant act of July 1, 1862 (12 Stat. 492), made a withdrawal of lands for 15 miles on each side of the general route (as designated) of a certain railroad within the scope of the act, part of which lands (the even-numbered sections) were afterwards restored to market and raised to double-minimum lands, in accordance with the act of March 3, 1853 (10 Stat. 244). Thereafter, in September, 1865, 7,682.92 acres of these double-minimum lands at \$2.50 an acre were certified to and accepted by the State of Kansas, in lieu of 15,365.84 acres at the minimum price of \$1.25 an acre, which last completed the quantity to which the State was originally entitled: *Held* that the claim of the State under the said act of July 2, 1862, is fully satisfied, and that it is not entitled to a further allowance thereunder, as claimed, of 7,682.92 acres. 17 Op. 129.

19. **University land grants.**—Under the provisions of section 14 of the act of February 22, 1889 (25 Stat. 680), the States of North Dakota and South Dakota take each 72

sections of land for university purposes. 19 Op. 635.

20. **Same—Certification.**—Lands which were selected for the Territory of Dakota under the act of February 18, 1881 (21 Stat. 326), and which lie within the State of South Dakota, should be certified to that State. *Ib.*

#### VII. Swamp-Land Grants.

21. **Indemnity.**—The decision of the Secretary of the Interior, in November, 1855, that those lands which had been reserved by the President under the act of September 20, 1850 (9 Stat. 466), granting lands to the State of Illinois to aid in the construction of a railroad, did not pass to the State by virtue of the swamp-land grant of September 28, 1850 (9 Stat. 519), is to be treated as *res adjudicata* as to all the lands embraced within the belt of territory to which it specifically relates and refers. 17 Op. 27.

22. **Indemnity for swamp lands sold by the United States.**—Under the provisions of the acts of March 2, 1855 (10 Stat. 634), and March 3, 1857 (11 Stat. 251), the State of Louisiana is entitled to indemnity for any swamp lands granted to that State by the act of March 2, 1849 (9 Stat. 352), which were sold by the United States between the date of that act and the 28th of September, 1850. 18 Op. 522.

23. **Same.**—But as to such swamp lands as were excepted out of the grant made by the said act of 1849 (*viz.*, "lands fronting on rivers, creeks, bayous, water courses," etc.), and as were first granted to that State by the act of September 28, 1850 (9 Stat. 519), it is entitled to indemnity only for those which have been sold by the United States since the 28th of September, 1850. *Ib.*

24. **Same.**—The Secretary of the Interior is warranted in approving certain statements of account between the United States and the State of Ohio, made by the Commissioner of the General Land Office, for cash indemnity for swamp lands sold during the period intervening between the passage of the swamp-land act of September 28, 1850 (9 Stat. 519), and March 3, 1857 (11 Stat. 251). 18 Op. 170.

*See* 15 Op. 340.

25. A bill in equity will not lie against the State of Minnesota for the purpose of vacating

a patent issued to that State under the swamp-land grant, on the mere ground that the land thus patented was not in fact swamp land. 19 Op. 684.

26. **Swamp-land grants, Minnesota—Forest reserve.**—The act of March 12, 1860 (12 Stat. 3), granting to the State of Minnesota all swamp and overflowed lands unfit for cultivation within its limits, was a grant in *præsentia*, the intention of Congress being to give the beneficial title immediately to the State of all the lands thereby granted, as against claimants attempting to initiate rights afterwards, except under laws theretofore enacted. 25 Op. 626.

27. **Same.**—The requirement of the second section of that act (partly contained in section 2490, Rev. Stat.), that the selection of surveyed lands should be made within two years from the adjournment of the legislature of the State at its next session after the date of the act, and as to all unsurveyed lands within two years after such adjournment after notice by the Secretary of the Interior to the governor of the State that the surveys have been completed and confirmed, was not a condition or limitation of the grant, but merely a direction to the Secretary of the Interior. *Ib.*

28. **Same.**—By section 2490, Revised Statutes, selections are to be made under section 2480 (the act of September 28, 1850) and not as provided by the act of March 12, 1860, and the act of March 2, 1849, relating to swamp lands in Louisiana. *Ib.*

29. **Same.**—The authority conferred by the act of June 27, 1902 (32 Stat. 400, 402), upon the Forester of the Department of Agriculture to select lands from certain Indian reservations to constitute a forest reserve did not authorize him to reserve the swamp lands conveyed to the State of Minnesota by the act of March 12, 1860. *Ib.*

30. **Same.**—The creation, subsequent to the passage of the act of March 12, 1860, of an Indian reservation upon the lands which were free public lands at the date of the passage of that act did not give the Indians such title to swamp lands embraced within the limits of the reservation as will prevent the fulfillment of the Government's grant of lands to Minnesota. *Ib.*

### VIII. To Counties for Public Building Sites.

31. Proceedings to recover land used for other than purpose named in the grant.—The institution of proceedings on behalf of the United States to recover the title and possession of certain land (part of the Hot Springs Reservation) granted to the county of Garland, Arkansas, for the site of a public building, which land is not used for that purpose, but has been leased to private parties for a period of ninety-nine years, would not be warranted for the reason that it is not clear whether the statute donating the land annexes a condition to the grant or creates a mere trust, and for the further reason that the county has brought suit to annul the lease and recover control of the property. 18 Op. 264.

32. Same—Forfeiture.—In the absence of any action on the part of Congress declaring forfeiture or directing suit, the Attorney-General is not warranted in instituting proceedings to recover to the United States the title and possession of the land granted by section 19 of the act of March 3, 1877 (19 Stat. 380), to the county of Garland, Arkansas, as a public building site. 20 Op. 307.

### IX. Grants for Penitentiaries.

33. The provisions of section 9 of the act of March 3, 1875 (18 Stat. 474), granting certain sections of unappropriated public lands within the State of Colorado to the State for penitentiary purposes, to be selected and located by direction of the legislature with the approval of the President of the United States on or before a specified date, are not directory, as Congress had no right to give directions to the legislature of a State, but are in the nature of conditions precedent, and can only be given effect as conditions, and a failure by the designated authorities to select and locate the lands within the time named, renders the grant inoperative. After the expiration of said time the President is not authorized to approve a selection and location of said lands. 21 Op. 462.

### X. Mineral Lands.

34. Mineral lands belonging to the public domain, which are reserved from sale under

section 2318, Revised Statutes, may be reserved by the President for military or other public purposes. 17 Op. 230.

35. Same.—Where such lands are included in a military reservation, they are not open to exploration and purchase under section 2319, Revised Statutes. *Ib.*

36. Same.—It is otherwise where a right has once attached to mineral land, under the laws relating thereto, in favor of the locator of a mining claim. *Ib.*

37. Same.—Where a right to mineral land has once attached, the land is not subject to reservation by the President during the existence of such rights; and if it be subsequently reserved, the locator may nevertheless perfect his title. *Ib.*

38. Patents for—Exception therefrom of town-site rights.—No legal objection exists to the practice of the Land Department, in issuing patents for mining claims upon veins or lodes, to insert in the patent a clause excepting from the grant all town-site rights in the premises, where it appears that the surface ground of any such claim lies wholly or partly within the limits of a previously located, entered, or patented town site. 17 Op. 248.

### XI. Reservations.

39. Preemption—Homestead lands—After entry can not be set apart for military reservation.—Where public land subject to homestead settlement has been duly entered under the homestead law, it thenceforth ceases to be at the disposal of the Government so long as the entry of the settler subsists. Hence it can not, while such entry stands, be set apart by the President for a military reservation. 17 Op. 160.

40. Same—But may be reserved before payment and entry.—Where, however, a preemption filing has been made of public lands, the land covered thereby may be set apart by the President for such reservation at any time previous to payment and entry by the settler under the preemption law. *Ib.*

*See also X, MINERAL LANDS.*

41. Irrigation purposes—Withdrawal from entry.—The provision in the act of October 2, 1888 (25 Stat. 526), reserving from sale or entry lands designated or selected for reservoirs, ditches, or canals for irrigation pur-

poses, and also lands made susceptible of irrigation by such reservoirs, ditches, or canals, operates as an immediate withdrawal of the lands thus described from entry and settlement. 19 Op. 564.

**42. Indian reservations made from public domain within limits of a State.**—The President has power to make a reservation for the occupation of Indians from public domain lying within the limits of a State. 17 Op. 258.

*See also* INDIANS, III.

### XII. Private Land Claims.

**43. New Mexico—Nolan grant.**—The proviso in the fourth section of the act of July 1, 1870 (16 Stat. 646), confirming the Nolan grant, No. 48, does not include his claim to certain land in New Mexico, known as claim 39. 19 Op. 8.

**44. Same.**—There has not as yet been any "final action by Congress" on this claim, as contemplated in the eighth section of the act of July 22, 1854 (10 Stat. 309). *Ib.*

**45. A former citizen of the United States who in 1889 expatriated himself and became a citizen of Mexico can not invoke Article XXI of the treaty of Guadalupe Hidalgo for an arbitration as against an act of this Government done while he was a citizen thereof.** *Ib.*

**46. New Mexico—Pinkerton claim.**—A claim of one Pinkerton to certain lands in the Territory of New Mexico considered, and his remedy, if he has any, decided to be under the act of March 3, 1891 (26 Stat. 854), establishing a court of private land claims in certain States and Territories. 20 Op. 118.

### XIII. Timber Depredations.

**47. Disposition or deposit of moneys recovered for.**—The provisions in section 2 of the act of April 30, 1878 (20 Stat. 46), requiring moneys collected for depredations upon the public lands to be covered into the Treasury, in effect modifies section 4751, Revised Statutes, only as to that part of the penalties, etc., recovered which was payable under the latter section to the Secretary of the Navy; it does not affect the part payable thereunder to informers. 17 Op. 592.

**48. Same.**—Section 5 of the act of June 3, 1878 (20 Stat. 90), applies to the Pacific States and Washington Territory, and repeals section 4751, Revised Statutes, only so far as concerns such States and Territory. *Ib.*

**49. Seizure of timber unlawfully cut.**—The Land Department has authority to make seizure, through its officers or agents, of timber unlawfully cut on the public lands. 18 Op. 434.

**50. Disposal.**—Timber unlawfully cut on the public lands, which has been seized by duly authorized agents of the Land Department, and is in their custody, may be disposed of by that Department; and whether this be done by public or private sale, with or without previous advertisement, is a matter entirely discretionary therewith. *Ib.*

**51. Timber unlawfully cut on an Indian reservation may be sold for and on account of the United States.** The sale should be made by the Commissioner of the General Land Office, under the supervision of the Secretary of the Interior. 19 Op. 710.

Opinion of August 23, 1886 (18 Op. 434) concurred in. *Ib.*

*See also* INDIANS, IV.

**52. The lands lying in the "Cherokee Strip," which are leased to the whites, are not lands of the United States within the meaning of section 5388, Revised Statutes, which penalizes the cutting or destroying of timber on the lands of the United States,** 18 Op. 555.

**53. Section 5388, Revised Statutes, makes no provision for seizure of property belonging to a wrongdoer.** *Ib.*

**54. Removal of timber by railroad company.**—A railroad company to which has been granted by the United States every alternate section of the public land not mineral, designated by odd numbers, to the extent of 20 alternate sections per mile on each side of its railroad, possesses no authority to select its own lands, locate them in sections, and then cut timber from the land which it has so surveyed. 20 Op. 542.

**55. The provisions of sections 2461, 2462, 2463, and 4751, Revised Statutes, are intended to protect and preserve live oak, red cedar, and other like timber, whether the same shall be upon land reserved or purchased by the United States for the purpose of supplying**

such timber for the Navy, or whether it be upon other lands of the United States, provided only that the timber is live oak, or red cedar, or other like timber, such as would be useful to the Navy for naval purposes. 19 Op. 381.

**56. Informers.**—Where trespasses were committed in the State of Michigan, by cutting, destroying, removing, etc., live oak or red cedar trees, or other like timber useful for naval purposes, on and from lands belonging to the United States: *Advised that informers in such cases are entitled to one-half of the penalties, etc., recovered under section 4751, Revised Statutes, bearing in mind the power given to the Secretary of the Navy in that section.* *Ib.*

#### XIV. Restoration to Public Domain.

**57. Public lands once reserved by the President for military or other purposes, and subsequently no longer needed for such purposes, can not be restored to the public domain without authority from Congress.** 17 Op. 168. (16 Op. 123; 10 Op. 360.)

**58.** The act of March 3, 1887 (24 Stat. 556), is mandatory, and makes it the duty of the United States to bring a suit to restore title to the United States if the party to whom the land was erroneously certified after a prior certification does not give or procure a relinquishment or reconveyance. 20 Op. 224.

**59. Certification of land already covered by a homestead or preemption entry is erroneous and without authority of law.** *Ib.*

**60. Congress alone can restore to the public domain land reserved therefrom for the use of the Navy Department.** 21 Op. 120.

#### XV. Miscellaneous.

**61. Military road.—Withdrawal from sale.**—The appropriation by Congress of land for a military road and the building of such road thereon just as effectually withdraws and excludes such land from sale as if it had been done in express terms. 23 Op. 283.

**62. Same.—Effect of patents for lands through which such road passes.**—The fact that patents have since been issued for lands

through which such road passes, without any reservation of the lands included within the road, does not operate as a vacation of the portion of the road within the patented lands, nor give to such owner a right to obstruct, interfere with, or change the location of the road. *Ib.*

**63. Same.—Authority to abandon, vacate, or alienate the road.**—Congress having set apart a portion of the public domain for a military road, and having constructed thereon such road, it is not within the power of any other department of the Government to abandon, vacate, or alienate the road, or the land on which it is constructed, and a patent issued for such lands would to that extent be inoperative and void. *Ib.*

**64. Same.—Not subject to State or private control.**—Such a road, though within a State, is not subject to either State, municipal, or private control or interference in any way. *Ib.*

**65. The Soldiers' Home is not entitled to bounty land warrants belonging to the estates of deceased soldiers which remain unclaimed for the period of three years after their decease.** 17 Op. 157.

**66. Adjustment.—Sale of unclaimed lands.**—The term "bona fide purchasers of said unclaimed land," referred to in the third proviso of section 3 of the act of March 3, 1887 (24 Stat. 556), means those persons who, without knowledge of wrong or error, have purchased from the railroad company lands which had been previously entered by a preemption or homestead settler, where entry had been erroneously canceled as described in the first clause of that section, and which land the preemption or homestead settler did not elect to claim after the recovery by the proceedings prescribed by the second section of the act. 19 Op. 68.

**67. Same.—Issue of patents.**—Patents, the issue whereof is provided for in the fourth section of the same act, are only intended to be issued after it shall have been legally determined, in the mode prescribed in the second section, that the certification or patent to the railroad company had been erroneously issued. *Ib.*

**68. Same.**—The word "grant," in the fifth section, should be construed to include (as it does in the preceding sections of the act)

both the primary and the indemnity limits. *Ib.*

*See also* RAILROADS, III.

69. **Hawaii.**—The officers of the Hawaiian government have no authority to sell or otherwise dispose of the public lands in the Hawaiian Islands, and any such sales or agreements to sell are absolutely null and void as against the Government of the United States. 22 Op. 575.

70. **Same.**—By the resolution of annexation the local government of Hawaii was deprived of all authority to dispose of public lands in any manner whatsoever, except by virtue of special laws enacted by Congress. *Ib.*

71. The Hawaiian government has no power to convey or confirm title to public lands where conditional sales or entries were made prior to the resolution of annexation and the conditions entitling such persons or entrymen to a grant have been subsequently performed, such power having been transferred to the United States. 22 Op. 627.

72. **Same.**—By the resolution of annexation the public property of Hawaii, including the lands, became vested in the United States, and only by their authority or direction can these lands be disposed of. *Ib.*

73. **Same.**—All interest of the Republic of Hawaii in public lands at the time the resolution of annexation took effect were thereby transferred to the United States, and thenceforth the officials of Hawaii were without power to convey by grant or cession the legal or equitable title of the United States. *Ib.*

74. **Same.**—Congress having failed to legislate on the subject of public lands for the Hawaiian Islands, the government of Hawaii is not reinvested with its former power of their disposition. *Ib.*

75. **Porto Rico.**—Under Spanish laws, lands under tide water to high-water mark in the ports and harbors in the Spanish West Indies belonged to the Crown, and as such, by treaty of cession, have become a part of the public domain of the United States. 22 Op. 544.

76. **Same.**—The power to dispose permanently of the public lands and property in Porto Rico rests in Congress, and in the absence of a statute conferring such power, can not be exercised by the Executive Departments of the Government. *Ib.*

77. **Same.**—During the military control of Porto Rico leave or license may be granted an individual to make temporary use of portions of the public domain. *Ib.*

78. The so-called "public lands" of Porto Rico which, prior to the treaty of Paris of December 10, 1898 (30 Stat. 1754), belonged to Spain, were, by that treaty, ceded to and now belong to the United States, and not to Porto Rico. 24 Op. 8.

FOR BUILDINGS ERECTED ON WHAT WAS ERRONEOUSLY BELIEVED TO BE THE PUBLIC DOMAIN. *See* UNITED STATES, 90-92.

*See also* RAILROADS, III; RESERVATIONS AND PARKS, III.

### PUBLIC MONEYS.

DISBURSING AGENT. *See* TREASURY DEPARTMENT, II, i; PUBLIC BUILDINGS, 26-37.

### PUBLIC OFFICERS.

*See* OFFICE AND OFFICERS.

### PUBLIC WORKS.

*See* APPROPRIATIONS; CONTRACTS; RIVERS AND HARBORS; CUBA.

### PUBLIC PRINTING.

I. In General, 1-6.

II. Government Printing Office, 7-8.

III. Bureau of Engraving and Printing, 9-14.

IV. Executive Departments, 15-21.

#### I. In general.

1. The allotment of the Public Printer's appropriation among the different Departments is not within the jurisdiction of the accounting officers of the Treasury. 21 Op. 423.

2. Copies of Congressional documents ordered by an Executive Department from the Public Printer under section 90 of the public print-

ing and binding act of January 12, 1895 (28 Stat. 623), by the Secretary of State to a number not exceeding the number of bureaus in his Department, should not be charged to the allotment of the Public Printer's appropriation for such Department. *Ib.*

3. The word "document" in the joint resolution of July 7, 1882, "to provide for the printing of public documents," etc., applies to everything that is a document, no matter by what kind of legislation ordered, whether by special act or otherwise, so that such legislation does not actually forbid the printing of the "usual number" of the document. 18 Op. 51.

4. The "usual number" at the present time (1884), within the meaning of the resolution, is 1900. *Ib.*

5. Delivery of entire copy within fiscal year.—The word "order" in section 80 of the public printing and binding act of January 12, 1895 (28 Stat. 621), providing that "no order for public printing shall be acted upon by the Public Printer after the expiration of one year unless the entire copy and illustrations for the work shall have been furnished within that period," was not intended to include a joint resolution of Congress like the resolution of April 2, 1894, providing for printing "a history of the international arbitrations to which the United States was a party, together with a digest of the decisions rendered in such arbitrations." 21 Op. 427.

6. Slip laws.—Under section 56 of the public printing and binding act of January 12, 1895 (28 Stat. 609), the Public Printer should print in slip form and distribute 760 copies of private laws, postal conventions, and treaties. 21 Op. 405.

## II. Government Printing Office.

7. Purchase of paper and materials for—Advertisement.—Section 3709, Revised Statutes, prohibiting purchases and contracts for supplies by the Departments of the Government except after due advertisement for proposals, does not apply to paper and materials for the Government Printing Office; and the acts amendatory of that section (Jan. 27, 1894, 28 Stat. 33, and Apr. 21, 1894, 28 Stat. 62) enlarged it in respect to that office only so as to apply to fuel, ice, stationery, and miscellaneous supplies. 21 Op. 137.

8. Same.—The purchases by the Public Printer contemplated by the act of January 12, 1895 (28 Stat. 601), are paper and materials for printing and binding public documents and such as do not come within Revised Statutes, section 3709. *Ib.*

## III. Bureau of Engraving and Printing.

9. Estimates.—The provisions of section 2 of the act of March 3, 1883 (22 Stat. 526), requiring the Chief of the Bureau of Engraving and Printing to submit estimates of the cost of executing certain work for the Post-Office Department and to perform the work if his estimates be lower than the proposals of the other bidders, are mandatory. 20 Op. 132.

10. Same.—If, however, by reason of subsequent legislation or inadequate facilities, the statute has become impossible of execution, such facts may properly be considered in submitting the bids and also may properly be considered by the Postmaster-General in making the awards. *Ib.*

11. The use of steam plate-printing machines in the Bureau of Engraving and Printing is prohibited under the act of March 2, 1889 (25 Stat. 939, 945), except upon a compliance by the patentees with the requirements specified in that act. 20 Op. 33.

12. Postage stamps.—The Bureau of Engraving and Printing may compete for the work of engraving and printing United States postage stamps. 22 Op. 40.

13. Leaves of absence.—Employees of the Bureau of Engraving and Printing are entitled to leaves of absence under the act of July 6, 1892 (27 Stat. 87), notwithstanding section 5 of the act of March 3, 1893 (27 Stat. 715). 21 Op. 338.

14. Same.—The act of July 6, 1892 (27 Stat. 87), relating to leave of absence to employees of the Bureau of Engraving and Printing, contemplates a maximum leave of absence to pieceworkers of thirty days, with a continuance of average compensation; and a leave of absence, with pay during the same, to a pieceworker whose service and consequent earnings are less than the maximum, determined by the average amount of his work and of his pay therefor. 20 Op. 429.

**IV. Executive Departments.**

**15. Number of copies of Government publications allowed a head of a Department.**—The head of an Executive Department has no right under section 90 of the printing bill of January 12, 1895 (28 Stat. 623), to make a requisition upon the Public Printer for a greater number of copies of Government publications other than "bills and resolutions" than the number of bureaus in the Department and divisions in the office of the head thereof. 21 Op. 370.

**16. Same—Additional copies.**—The head of an Executive Department has, however, the right to make such requisition, provided the cost of the printing is to be charged against the printing appropriation for his Department, and the Public Printer has no authority to pass upon the character of publications which he may deem essential for carrying out the work of his Department. *Ib.*

**17. Printing of special reports of Department bureau chiefs.**—Section 89 of the act of January 12, 1895 (28 Stat. 622), authorizes the printing of 2,500 copies of special as well as annual reports of Department bureau chiefs, when such printing is directed by the head of a Department. 25 Op. 377.

**18. Illustrations, engravings, maps, etc., to accompany bulletins.**—The Secretary of Agriculture has authority to procure and furnish to the Public Printer the illustrations, engravings, maps, and charts to accompany the bulletins and special reports prepared in his Department. 20 Op. 49.

**19. Same.**—Section 3706, Revised Statutes, which requires all binding for the Executive Departments to be done at the Government Printing Office, does not include illustrations and engravings, maps, or charts. *Ib.*

**20. Bulletins Department of Agriculture, Number of Pages.**—Section 89 of the act of January 12, 1895 (28 Stat. 622), limits the number of pages of the bulletins of the Department of Agriculture to 100, and the maximum size of the pages to octavo. 22 Op. 265.

**21. Internal-revenue stamps.**—The Commissioner of Internal Revenue is authorized, by the act of July 7, 1884 (23 Stat. 172), to cause internal-revenue stamps for the payment of tax upon tobacco to be prepared elsewhere than in the Bureau of Engraving and Printing, provided the United States are at no expense

thereabout beyond that for the provisional payment of the salaries of one stamp agent and one counter, "to be reimbursed by the stamp manufacturers." 18 Op. 62.

*See also* the several Executive Departments.

**PURCHASE OF LAND.**

*See* PUBLIC BUILDINGS; NAVIGABLE WATERS, II, a; GETTYSBURG BATTLEFIELD; UNITED STATES, V.

**PURCHASE OF PATENTED ARTICLES.**

*See* UNITED STATES, IX.

**PURCHASE OF SEEDS.**

*See* DEPARTMENT OF AGRICULTURE, VII.

**PURCHASE OF SUPPLIES.**

*See* ARMY, I, g; NAVY, I, f; EXECUTIVE DEPARTMENTS, IV; POST-OFFICE DEPARTMENT, 1-5.

**PURCHASE OF UNITED STATES BONDS.**

*See* TREASURY DEPARTMENT, VI.

**"PUT."**

*See* WORDS AND PHRASES.

**PUYALLUP INDIAN RESERVATION.**

*See* INDIANS, 26.

**QUAPAW ALLOTMENT LANDS.**

SALE OF. *See* INDIANS, 92, '93.



**QUARANTINE.**

*See* HEALTH AND QUARANTINE.

**QUARTERMASTERS.**

*See* ARMY, II, a, 53.

**QUARTERMASTER'S VOLUNTEERS.**

*See* CIVIL SERVICE, 125.

**QUASI-JUDICIAL ACTS.**

**In writing—How undone.**—An important quasi-judicial joint act in writing can be undone only by another joint act in writing, and that also indorsed upon the original paper itself or upon one duly attached thereto. 18 Op. 5.

**QUESTIONS OF FACT.**

Whether persons crossing from the United States into Canada, buying clothes there, and immediately returning with the clothes, can introduce them free of duty under paragraph 752 of the act of October 1, 1890 (26 Stat. 611), involves, in any given case, a question of fact. 21 Op. 3.

*See also* ATTORNEY-GENERAL, II, m.

**RAILROADS.****I. Generally, 1-9.****II. Bond-Aided.**

- a. *Generally*, 10-16.
- b. *Northern Pacific Railway Company*, 17-20.
- c. *Central Pacific Railroad Companies*, 21-28.
- d. *Union Pacific Railroad Company, et al.*, 29-39.
- e. *Sioux City and Pacific Railroad Company*, 40.

**III. Land Grants.**

- a. *Patents*, 41-44.
- b. *Timber*, 45-48.
- c. *Miscellaneous*, 49-64.

**IV. Transportation, 65-70.****I. Generally.**

1. **Right to carry letters and packets outside the mails.**—A railroad company has the right to carry outside of the mails and not in Government stamped envelopes letters and packets relating to the business of the railroad on which they are carried, but it has no right to transport letters for a third person. This right includes letters written and sent by the officers and agents of the railroad company which carries and delivers them, about its business, and these only. They may be letters to others of its officers and agents, to those of connecting lines, or to anyone else, so long as no other carrier intervenes. 21 Op. 395.

2. **Letters of a company addressed to officers or agents of a connecting line on company business and delivered to an agent of the latter at the point of connection may be carried by the latter to any point on its line, because such letters become its own on receipt by any one of its agents.** *Ib.*

3. **Any company, or any officer or employee thereof, carrying letters which are neither written by that company nor addressed to it, is liable to the penalties imposed by law.** *Ib.*

4. **A railroad company may not carry letters from one of its connecting lines to another although they relate to through business over the lines of all. Such letters do not "relate to its business" within the meaning of the postal regulations.** *Ib.*

5. **The expression "private hands," in section 3992, Revised Statutes, was intended to cover all except common carriers on post routes. Neither the latter nor their employees can be considered as "private hands" under this section, and if they could be, the express or implied obligation of railroads to carry letters for each other to remotely connecting lines would amount to "compensation" within the meaning of the statute.** *Ib.*

6. **The denial of the right of railroad companies to carry letters between other companies with whose lines their own connect applies also**

to the carrying of letters by railroad companies for companies, corporations, or private individuals, operating car lines, transportation lines, hotels, restaurants, or any class of business that may either be connected with or not connected with the railroad proper. *Ib.*

7. Railroad companies can not set up any "common right" against the conditions which the law incorporates in their contracts with the Government. *Ib.*

8. Great Falls Electric Railway over the Washington Aqueduct—Approval of Survey.—The Secretary of War is not authorized under the provisions of the act of July 29, 1892 (27 Stat. 326), to approve a survey of the Great Falls Electric Railway Company over the lands of the Washington Aqueduct where the inner rail of said railway will be less than the required distance from the point specified in said act. 21 Op. 294.

9. Annulment of right of way, and grants of land.—Where a railroad made application to the Secretary of the Interior with a view to securing the benefit of the said act of March 3, 1875 (18 Stat. 482), and its articles of incorporation and map of definite location were approved by the Secretary, but it afterwards appeared that the action of the Secretary was based upon a mistake of fact caused by the representation of the railroad company itself, and that the application was for a purpose not within the statute: Held that it is competent to the Secretary to recall and annul his action approving the line of definite location of the road and entering the same on the public plats. 19 Op. 547.

## II. Bond-Aided.

### a. Generally.

10. Payment of claims for freight.—It is sufficient under sections 5260 and 5261, Revised Statutes, if, previous to the payment of claims for freight and transportation over the railroads of companies to which the United States have issued bonds, the law applicable thereto has been ascertained by a judgment of the Court of Claims, or, upon appeal, of the Supreme Court. Where the law is thus ascertained in one case, it may be acted upon

in all similar cases without further litigation. 17 Op. 512.

11. Same.—"The expression 'is directed to withhold all payments' in section 5260 refers, in the first place, to the payments due to such companies at the time of the passage of the act, but, no doubt, includes also, equitably, all payments thereafter of like sort, the principles governing which shall not previously have been ascertained by the Court of Claims or, upon appeal, by the Supreme Court." *Ib.*

12. Telegraph messages.—Where the Government has the power to send telegraph messages either by a bond-aided railway's telegraph system or by an independent company system located over the bond-aided railway company's route, and delivers them to the independent company's system without requesting that they be forwarded over the bond-aided railway route, payment must be made at the rate prescribed by the Postmaster-General. 20 Op. 581.

13. Same.—It is not improper to delay payment of the claim until the case involving the point now soon to be argued in the Supreme Court of the United States is decided. *Ib.*

14. Transportation of enlisted men of the Navy.—The word "*troops*" as used in section 6 of the act of July 1, 1862 (12 Stat. 495), and section 10 of the act of July 2, 1864 (13 Stat. 356), relating to the transportation of mails, troops, and munitions of war, etc., by Government-aided railroads, includes enlisted men of the Navy. 20 Op. 11.

15. Same.—Whether the whole amount of the contract price should be paid the West Shore Railroad Company of New York, for the transportation of enlisted men of the Navy from New York to California, a portion of the distance being over Government-aided railroads, the compensation for transportation over such roads being applicable, under the acts of July 1, 1862 (12 Stat. 489), and March 7, 1878 (20 Stat. 56), to the payment of bonds issued by the United States to aid in building roads, held to be a judicial question. *Ib.*

16. Same.—Advised that all compensation earned by the bond-aided railroads should be withheld until the questions of the rights of such roads in the premises are adjusted by agreement under the terms of the law or are judicially determined. *Ib.*

*b. Northern Pacific Railway Company.*

**17. Selection and location of alternate sections of land—Timber.**—The Northern Pacific Railway Company, which obtained a grant from the United States of every alternate section of the public land, not mineral, designated by odd numbers, to the amount of 20 alternate sections per mile on each side of its railroad, possesses no authority to select and locate its sections and to despoil the sections it has selected. Any surveys made by the company are without legal effect and do not authorize the company to cut or remove timber. 20 Op. 542.

**18. Patents to lands.**—The Northern Pacific Railroad Company, having completed and put in operation the railroad and telegraph lines authorized by the act of July 2, 1864 (13 Stat. 365), the condition of the grant to said company of certain lands mentioned in said act has been fully performed, and the right to have the lands patented was perfect in said company. 21 Op. 486.

**19. Transfer of bonds to purchaser in case of foreclosure.**—By its consent to the issuing of bonds, secured by mortgage on the railway and telegraph lines, Congress necessarily consented to their transfer to the purchaser in case of foreclosure, who, however, by operation of law, whether a natural or artificial person, and, if the latter, no matter how or by what authority created, would take the property subject to all the continuing rights of the Federal Government, just as the original company held it. *Ib.*

**20. Patents to be issued to the Northern Pacific Railway Company.**—The mortgages issued by the Northern Pacific Railroad Company having been foreclosed, and all of the property, rights, and franchises of the company sold at judicial sale to the Northern Pacific Railway Company, a Wisconsin corporation, and the latter having asked for the patenting to it, or to purchasers from it, of certain lands granted by the act of 1864, the Secretary of the Interior is not justified in refusing to issue such patents, but should act upon applications of the railway company for patents upon the same considerations which would govern in case there had been no foreclosure and the applications were made by the railroad company. *Ib.*

*c. Central Pacific Railroad Companies.*

**21. Sinking fund—Lien.**—Section 8 of the (Thurman) act of May 7, 1878 (20 Stat. 60), does not create a lien on the sinking funds of the Central Pacific Railroad companies prior to that of the United States in favor of the first-mortgage bondholders of those companies. 21 Op. 104.

**22. The entire sinking fund belonging to the Central Pacific, or its proceeds, may, if necessary be used to pay the indebtedness of the Central Pacific to the United States maturing in January, 1895.** *Ib.*

**23. A demand upon the railroad company is not necessary to fix its liability to reimburse the United States for all sums paid by the latter on account of principal and interest of subsidy bonds.** *Ib.*

**24. Method of accounting in the matter of the accounts between the United States and the subsidized Pacific roads stated.** *Ib.*

**25. The acts of July 1, 1862 (12 Stat. 489), and of July 2, 1864 (13 Stat. 356), construed in the light of the Thurman Act of May 7, 1878 (20 Stat. 56), and sundry decisions of the Supreme Court.** 21 Op. 145.

**26. The one-half of the earnings of the Central Pacific Railroad Company on Government business and its yearly payments of 5 per cent of its net profits can not be treated as having liquidated the whole or any part of the company's indebtedness on account of the principal of the subsidy bonds maturing January 16, 1895; but, on the other hand, must be regarded as paying interest debts exclusively.** *Ib.*

**27. The sums applicable in any one year to the payment of the company's interest debts for that year must be applied in the order in which such debts arise, and the fact that bonds have been issued at various times is of no consequence.** *Ib.*

**28. The familiar rule is that in case of payments by a debtor to a creditor upon distinct transactions for distinct accounts, when neither party makes an appropriation at the time, the payments are applied by law to the liabilities of earliest date.** *Ib.*

*d. Union Pacific Railway Company.*

**29. Allowance for transportation of mails.**—The allowance made to the Union Pacific

Railway Company for special service, to be paid out of the so-called "special facilities" appropriation, can not lawfully be paid to the company in cash, but must be retained and applied as directed by section 2 of the act of May 7, 1878 (20 Stat. 58). 17 Op. 393.

**30. Sinking funds—Reinvestment.**—Section 5 of the act of March 3, 1887 (24 Stat. 492), relating to the sinking funds of the Union Pacific and Central Pacific Railroad companies, applies to moneys belonging to those funds which are uninvested, and such moneys may be invested as therein provided. 18 Op. 598.

**31. Same.**—That section does not, however, authorize a sale of the United States bonds in which the funds are already invested for the purpose of reinvestment in the first-mortgage bonds of said companies. *Ib.*

**32. Same.**—How the fund may be invested.—Money paid into the sinking funds of said companies, under said act, may be invested (1) in United States bonds, as provided in act of May 7, 1878 (20 Stat. 56); (2) in any United States railroad subsidy bonds of any of the aided roads described in the act of July 1, 1862 (12 Stat. 489), and its supplements; and (3) in any of the first-mortgage bonds of said companies, such as are described in section 5 of the act of March 3, 1887 (24 Stat. 492). *Ib.*

**33. Sinking funds—Reinvestment.**—The power conferred on the Secretary of the Treasury by section 5 of the act of March 3, 1887 (24 Stat. 492), to reinvest the "sinking funds" of the Union Pacific and other railroads referred to in that section extends as much to the United States bonds then held by him as part of the sinking fund under the "Thurman Act" as to any money paid in from time to time for the purposes of that sinking fund. 19 Op. 491.

**34. Same.**—The United States bonds now in such sinking fund may be sold and the proceeds thereof reinvested in the first-mortgage bonds of any of the railroad companies referred to in the said act of March 3, 1887, as having received aid from the Government in bonds. Opinion of Attorney-General Garland of March 31, 1887 (18 Op. 598), dissented from. *Ib.*

**35. Recovery of money paid for transmission of Government dispatches over.**—The question whether, on the facts presented, an action

could be maintained by the United States against the Union Pacific Railroad Company, the Central Pacific Railroad Company, and the Western Union Telegraph Company, to recover back certain moneys paid for the transmission of Government dispatches over the bonded lines of said railroad companies, considered and held that an action may be maintained against the Central Pacific for the money stated to be owing by that company, provided such money has not been paid or applied, and that as regards the Union Pacific the compensation paid constituted a trust fund which can be followed into the hands of the Western Union Telegraph Company and the Union Pacific Railroad Company, who as joint agents received it. 19 Op. 76.

**36. Indebtedness of the Kansas Pacific.**—The Government directors of the Union Pacific Railway Company are chargeable with no duties or obligations in respect to the proceedings for the enforcement of the claim of the United States in the matter of the indebtedness of the Kansas Pacific Railway Company. 22 Op. 289.

**37. The United States not barred by sale of Central Branch Union Pacific Railroad.**—While the United States is named as a defendant in the bill of complaint to foreclose the mortgage on the Central Branch Union Pacific Railroad, no subpoena, citation, or other process was served upon it, nor did it appear as a party, and is, therefore, not barred by said decree of sale and might still redeem the property or cause its resale on account of its subsidy lien. 22 Op. 396.

**38. Same.**—This railroad, in accepting the assignment of the rights and franchises of the Hannibal and St. Joseph Railroad Company, and the grant of lands, bonds, etc., conferred by act of Congress in aid of its construction, succeeded also to, and had imposed upon it, all the obligations, limitations, and conditions with reference to the application of compensation for services for the Government toward the payment of these subsidy bonds. *Ib.*

**39. Same.**—One-half of the compensation due from time to time for the services rendered by this road for the Government should be withheld and applied upon the bonds issued by the United States in aid of its construction, notwithstanding the foreclosure and sale of the same. *Ib.*

*e. Sioux City and Pacific Railroad Company.*

40. In the settlement of the accounts of the Sioux City and Pacific Railroad Company, whose road was in part constructed with the aid of subsidy bonds issued under the acts of July 1, 1862 (12 Stat. 489), and July 2, 1864 (13 Stat. 356), for Government transportation over the subsidized portion of its road, advised that the direction in section 2 of the act of March 3, 1873 (17 Stat. 508; sec. 5260, Rev. Stat.), "to withhold all payments," etc., is now, November 12, 1886, no longer applicable thereto; that only one-half the amount of compensation due the company for such transportation should be withheld, to be applied as required by the act of July 2, 1864; and that the remaining one-half should be paid over to the company. 18 Op. 503.

III. Land Grant.

a. Patents.

41. Issuance of patents—Suspensions.—The Secretary of the Interior should continue the suspension of the issue of land patents to the New Orleans and Pacific Railway Company, heretofore made, and not issue any more patents until the proper tribunals, courts, or Congress definitely settle the rights of all parties in the premises. (Statement of facts contained in a communication accompany the request for an opinion, but not set forth in the opinion.) 18 Op. 221.

42. Patents.—The Chicago, St. Paul, Minneapolis and Omaha Railroad Company (successor of the Chicago and Northwestern Railroad Company) is entitled to patents to certain lands under the land grants made by the United States to the State of Wisconsin by the acts of June 3, 1856 (11 Stat. 20), and May 5, 1864 (13 Stat. 66), for the purpose of aiding in the construction of said railroad, notwithstanding the road was not completed within the period prescribed by those acts, the United States Government not having taken advantage of that fact before its completion or attempted to do so since, but, to the contrary, having for many years been using the railroad and adjusting its accounts as a land-grant road. 19 Op. 522.

43. Issuance of patents to the Northern Pacific Railway Company.—The mortgages issued by the Northern Pacific Railroad Company having been foreclosed, and all of the property, rights, and franchises of the company sold at judicial sale to the Northern Pacific Railway Company, a Wisconsin corporation, and the latter having asked for the patenting to it, or to purchasers from it, of certain lands granted by the act of 1864, the Secretary of the Interior is not justified in refusing to issue such patents, but should act upon applications of the railway company for patents upon the same considerations which would govern in case there had been no foreclosure and the applications were made by the railroad company. 21 Op. 486.

44. Same.—The Northern Pacific Railway Company, by virtue of the foreclosure proceedings had in 1896 and the sale thereunder to it of all the property, rights, and franchises of the Northern Pacific Railroad Company, became the successor in interest of the latter company, and the Secretary of the Interior should continue to issue to the new company patents for lands granted by the Government to the old company, upon the same conditions which would govern in case there had been no foreclosure and sale, and the applications were made by the old company. 25 Op. 401.

Opinion of February 6, 1897 (21 Op. 486), followed. *Id.*

Army transportation over land-grant roads, see Army IV.

See also 58.

b. Timber.

45. Use of Government timber.—The use by the Union River Logging Railroad Company, a corporation formed under the laws of Washington Territory, of Government timber standing along the line of its road was wholly unauthorized, and proper steps should be taken to secure indemnity to the Government and to bring to justice the individuals who have been concerned in violating the law for the protection of its property. 19 Op. 546.

46. Same—Purpose of grant.—The grant made by the act of March 3, 1875 (18 Stat. 482), of a right of way through the public lands, with the necessary land for stations, etc., was meant for railroad companies intending to operate roads as common carriers for the ben-

efit and convenience of the public, and not for the benefit of the companies solely. *Ib.*

47. **Same—Annulment of grant.**—Where a railroad made application to the Secretary of the Interior with a view to securing the benefit of the said act of 1875, and its articles of incorporation and map of definite location were approved by the Secretary, but it afterwards appeared that the action of the Secretary was based upon a mistake of fact caused by the representation of the railroad company itself, and that the application was for a purpose not within the statute: *Held* that it is competent to the Secretary to recall and annul his action approving the line of definite location of the road and entering the same on the public plats. *Ib.*

48. **Selection and location—Removal of timber.**—A railway company which has obtained a grant from the United States of every alternate section of the public land, not mineral, designated by odd numbers, to the amount of 20 alternate sections per mile on each side of its railroad, possesses no authority to select and locate its sections and to despoil the sections it has selected. Any surveys made by the company are without legal effect and do not authorize the company to cut or remove timber. 20 Op. 542.

*c. Miscellaneous.*

49. **Atlantic and Pacific Railroad Company's lines—Approval by President.**—The recommendations of the Secretary of the Interior as to the acceptance of certain sections of the railroad and telegraph lines of the Atlantic and Pacific Railroad Company should be approved by the President. 17 Op. 251.

50. **Union Pacific Railroad—Eastern Division—Completion—Acceptance.**—The last section of the Union Pacific Railroad, Eastern Division (formerly the Leavenworth, Pawnee and Western Railroad), was completed prior to the time fixed by statute, but was not accepted by the President until about four months after that time. 17 Op. 295.

51. **Same—Issuance of patents.**—There is no legal objection to the issue of patents to the company for lands lying along such section; but delay in this matter suggested in view of the fact that there is agitation in Congress in respect to railroad-land grants. *Ib.*

52. **New Orleans Pacific Railway Company—Transfer of land grant to**—The assent of Con-

gress to the transfer made by the New Orleans, Baton Rouge and Vicksburg Railroad Company to the New Orleans Pacific Railway Company of all the interest of the former company in the land grant contained in section 22 of the act of March 3, 1870 (16 Stat. 579), was not necessary to entitle the latter company to the benefit of such grant in aid of the construction of the road projected by it. The grant, by its terms, is *in presenti*; the interest of the New Orleans, Baton Rouge and Vicksburg Railroad Company therein, at the time of the transfer, was assignable, and the New Orleans Pacific Railway Company was such a successor or assignee as is contemplated by said act. 17 Op. 370.

53. **Same.**—The New Orleans Pacific Railway Company can not claim any benefit under the grant by reason of said transfer, for the 68 miles of the New Orleans, Mobile and Texas Railroad, if it was constructed prior to said act; nor, in case of such prior construction and the nonconstruction of any portion of the New Orleans, Baton Rouge and Vicksburg road, has the purpose of the grant failed and the grant lapsed. *Ib.*

54. **Same.**—If the New Orleans, Mobile and Texas road was constructed subsequently to the date of said act, so much of its road as is now owned by the New Orleans Pacific Railway Company is such a road as is contemplated for acceptance by the President, and patents may issue to the latter company for lands opposite to and conterminous with such constructed portion of the road. *Ib.*

55. **Central Pacific Railroad—Lands withdrawn and selected by State for indemnity for school lands.**—Certain lands within the 10-mile limits of the Central Pacific Railroad, being parts of odd-numbered sections granted thereto by the act of July 1, 1862 (12 Stat. 489), were, under section 7 of that act, ordered to be withdrawn, and this order was received at the land office at San Francisco on the 30th of January, 1865. The map showing definite location of line of said road was filed in General Land Office February 13, 1873, and on May 12, 1874, said lands were selected by the railroad company as inuring to it under said grant. But the same lands were selected by the State of California June 13, 1865, as indemnity for deficiency of school lands granted by acts of March 3, 1853, and February 26, 1859, and a list thereof was certified and ap-

proved to the State September 8, 1870. The railroad company applies for patents for these lands: *Advised* that the Secretary of the Interior is not authorized by the general laws or the provisions of the act of July 1, 1862, to issue such patents to the company. 17 Op. 406.

**56. St. Louis and San Francisco Railroad between St. Louis and Pacific not a land-grant road.**—Upon the facts stated: *Advised* that so much of the road of the St. Louis and San Francisco Railroad Company as lies between St. Louis and Pacific (a distance of about 35 miles) should not be treated as a land-grant road. 18 Op. 47.

**57. Sale of unclaimed lands.**—The term "bona fide purchasers of said unclaimed land," as used in the third proviso of section 3 of the act of March 3, 1887 (24 Stat. 556), means those persons who, without knowledge of wrong or error, have purchased from the railroad company lands which had been previously entered by a preemption or homestead settler, where entry had been erroneously canceled as described in the first clause of that section, and which land the preemption or homestead settler did not elect to claim after the recovery by the proceedings prescribed by the second section of the act. 19 Op. 68.

**58. Same—Issue of patents.**—Patents, the issue whereof is provided for in the fourth section of the same act, are only intended to be issued after it shall have been legally determined, in the mode prescribed in the second section, that the certification or patent to the railroad company had been erroneously issued. *Ib.*

**59. Same.**—The word "grant," in the fifth section, should be construed to include (as it does in the preceding sections of the act) both the primary and the indemnity limits. *Ib.*

**60. Northern Pacific Railroad Company—Indemnity belts.**—The joint resolution of May 31, 1870 (16 Stat. 378), added a second indemnity belt to the land grant made to the Northern Pacific Railroad Company by the act of July 2, 1864 (13 Stat. 365), such grant thus having two indemnity belts. 19 Op. 88.

**61. Same.—Indemnity selections within the first belt** (i. e., that originally created by the act of 1864) are not restricted to the limits of the particular State or Territory in which

the granted lands were lost, but may be made outside of those limits. *Ib.*

**62. Lands excepted from grant to Southern Pacific.**—The *proviso* in section 23 of the act of March 3, 1871 (16 Stat. 573), excepts from the operation of the grant made by that section to the Southern Pacific Railroad Company of California all lands within the primary limits of the road of said company which also fall within the primary or indemnity limits of the grant to the Atlantic and Pacific Railroad Company now forfeited, and such lands can be restored to settlement and entry under the general land laws. 19 Op. 134.

**63. Railroad land grant—Application of case of *Sjoli v. Dreschel* (199 U. S. 564).**—The Secretary of the Interior, in the administration of the several land grants to railroads, is not bound to follow the broad principles quoted in the decision of the Supreme Court in the case of *Sjoli v. Dreschel* (199 U. S. 564), but may confine what is said therein to a state of facts similar to those then before the court. 25 Op. 632.

**64. Lieu lands—Selection.**—No title passes to lieu lands before approval by the Secretary of the Interior of the company's list of selections; and, when so approved, the lands are to be considered as fully selected as of the date of the listing, so as to give to the company superiority over the right of homestead or preemption claimants settling after the listing by the company. *Ib.*

#### IV. Transportation.

**65. Army transportation.**—The payment of accounts of land-grant railroads (i. e., such as have not received aid in Government bonds) for army transportation, under the appropriation act of September 22, 1888 (25 Stat. 481), is not controlled by the *proviso* in the acts of June 30, 1882 (22 Stat. 120), and August 5, 1882 (22 Stat. 261), but is governed by the provisions of the act of 1888 alone; and under these provisions such accounts can be lawfully paid by a quartermaster without previous action thereon by the accounting officers of the Treasury. 19 Op. 264.

**66. The transportation of an officer in the Corps of Engineers of the Army, while traveling over the Michigan Central Railway in the discharge of duties connected with river and harbor**

improvements to which he has been assigned, comes within the provisions of the Michigan land-grant act of June 3, 1856 (11 Stat. 21), and of the act of July 3, 1866 (14 Stat. 78), supplementary thereto, requiring the transportation of troops of the United States free from toll or other charge. 19 Op. 572.

67. **Transportation of Government employees.**—The provisions of the interstate commerce act of February 4, 1887 (24 Stat. 379), do not extend to the postal service of the United States, nor prohibit the transportation by railroad companies, free of charge, of such officers or agents of the Government as are employed in that service. 18 Op. 587.

68. The provision in the act of March 3, 1877 (19 Stat. 291), requiring certain contracts for the transportation of goods for Indian tribes, etc., to be let to the lowest bidder after advertisement, does not supersede or repeal the act of March 3, 1875 (18 Stat. 453), and section 5260, Revised Statutes, touching payments of land-grant railroads for services to the Government. 18 Op. 41.

69. **Transportation of live stock—Twenty-eight hour law.**—The acceptance at St. Louis by the Terminal Railroad Association of St. Louis, or the St. Louis Merchants' Bridge Terminal Railway Company, of live stock consigned to the National Stock Yards, lying directly across the Mississippi River from St. Louis, in Illinois, and the carriage and delivery there of live stock which has been confined in the cars of connecting railways for a period longer than twenty-eight hours without having been unloaded for rest, water, and feed, unless prevented by storm or other accidental causes, or unless the live stock is carried in cars in which it can and does have opportunity for feed, rest, and water, is a violation of the provisions of section 4386, Revised Statutes. 25 Op. 411.

70. **Same.**—Section 4386 is unambiguous, and is clearly designed to prevent any railroad company within the United States, whose road forms any part of a line of road over which live stock is conveyed from one State to another, from transporting such animals except in accordance with its provisions. *Id.*

**RAILWAY RATES.** See INTERSTATE COMMERCE.  
**RAILROAD BRIDGES.** See NAVIGABLE WATERS, III, a.

**TRESPASS ON INDIAN LANDS.** See INDIANS, 45-47.

**OBSTRUCTION OF MAIL TRAINS.** See MAILS.

**TRANSPORTATION.** See RAILROADS, IV, and 10-16, 29, 35, 38, 39.

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#### RAILWAY MAIL SERVICE.

**CLERKS.** See POSTAL SERVICE, 52-55.

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#### RANGE FINDERS.

See PORTO RICO, 19.

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#### RANK AND PAY.

See ARMY, II, d; NAVY, II, d; III, d.

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#### REAPPOINTMENT.

See CIVIL SERVICE, III, f.

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#### REAPPRAISEMENT.

See CUSTOMS LAWS, III, b; X.

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#### REBATE CHECK.

See INTERNAL REVENUE, 15.

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#### RECEIPTS.

See INTERNAL REVENUE, 115, and WORDS AND PHRASES.

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#### RECESS APPOINTMENTS.

See OFFICE AND OFFICERS, II; PRESIDENT, I.

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#### RECIPROCAL COMMERCIAL AGREEMENTS.

See CUSTOMS LAW, XIII.



**RECOGNIZANCE.**

1. Outside of the District of Columbia the President has no power to remit the forfeiture of a judgment on a recognizance. 21 Op. 494.

2. The power to compromise claims in favor of the United States, which includes judgments on recognizances, is vested by law in the Secretary of the Treasury with respect to all claims save those arising under the postal laws. *Ib.*

**RECONSIDERATION.**

By President of Act of Predecessor in Advancement of Naval Officer. *See* NAVY, 36.

**RECORD AND PENSION DIVISION, CHIEF OF.**

*See* WAR DEPARTMENT, III.

**RECORDER OF DEEDS.**

*See* DISTRICT OF COLUMBIA, III, 25.

**RECORDS OF THE POSTAL DEPARTMENT OF THE LATE CONFEDERATE STATES.**

*See* POST-OFFICE DEPARTMENT. 12.

**REDEMPTION.**

*See* BANKS, 16, 17; TREASURY DEPARTMENT, 179-181; INTERNAL REVENUE, 126.

**REENLISTMENT.**

*See* ARMY, I, b.

**REEXAMINATION.**

OF RETIRED NAVAL OFFICERS. *See* NAVY, II, c.

**REFINING.**

MOLASSES IN BONDED WAREHOUSES. *See* CUSTOMS LAW, 120.

**REFUND.**

OF DUTIES. *See* CUSTOMS LAW, VI.

OF HEAD TAX. *See* SHIPPING, 72; IMMIGRATION, VI.

OF TONNAGE TAX. *See* SHIPPING, 62-65.

OF MONEYS IMPROPERLY EXACTED AND PAID BY OWNERS OF VESSELS. *See* SHIPPING, 77.

OF FINES IMPOSED UNDER THE SHIPPING ACT OF 1884. *See* FINES, PENALTIES, AND FORFEITURES, 6.

OF DIRECT TAXES. *See* DIRECT TAXES.

OF INTERNAL-REVENUE TAXES. *See* INTERNAL REVENUE, 125.

OF ENTRANCE AND CLEARANCE FEES. *See* SHIPPING, 80.

**REGISTER OF WILLS.**

*See* DISTRICT OF COLUMBIA, 25.

**REGISTERS AND RECEIVERS OF LAND OFFICES.**

USE OF PENALTY ENVELOPES. *See* POSTAL SERVICE, 133.

REGISTRATION OF OFFICIAL MAIL. *See* POSTAL SERVICE, 143.

**REGISTERED MAIL.**

*See* POSTAL SERVICE, VII.

**REGISTRATION.**

OF TRADE-MARKS. *See* TRADE-MARKS.

**REGISTRY.**

OF VESSELS. *See* SHIPPING, I, c.

**REGISTRY CLERK.**

DETAIL OF, TO WHITE HOUSE. *See* CIVIL SERVICE, 60.

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**REGULATIONS.**

*See* ARMY, VIII; NAVY, VI; TREASURY DEPARTMENT, IV; EXECUTIVE DEPARTMENTS, III; STEAMBOAT-INSPECTION SERVICE, 17-20, 30; DEPARTMENT OF COMMERCE AND LABOR, 3; DEPARTMENT OF AGRICULTURE, V; POSTAL SERVICE, I; SEAL FISHERIES, III.

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**REID CLAIM.**

*See* CLAIMS, 13-28.

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**REIMPORTATION.**

*See* CUSTOMS LAW, III, 1.

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**REINSTATEMENT.**

*See* CIVIL SERVICE, III, f; NAVAL ACADEMY, 9-13.

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**REINSURANCE POLICIES.**

*See* INTERNAL REVENUE, 97.

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**RELATIVE RANK.**

*See* ARMY, II, d; NAVY, II, d, and III, d; NAVAL ACADEMY, 2.

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**RELEASE.**

OF THE CRUISER GALVESTON. *See* UNITED STATES, 23-26.  
OF SEIZED VESSEL. *See* SEIZURE, 8.

**RELIQUIDATION.**

OF DUTIES. *See* CUSTOMS LAWS, V, c.

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**REMISSION.**

OF FINES, PENALTIES, AND FORFEITURES. *See* CUSTOMS LAWS, IX, g; CONTRACTS, V; TREASURY DEPARTMENT, II, VII; IMMIGRATION, VI; PRESIDENT, 112-113.

OF TAXES. *See* PORTO RICO, 27-29.

OF TAX ON SEALSKINS. *See* SEAL FISHERIES, 1-3.

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**RENTAL OF SEAL FISHERIES.**

*See* SEAL FISHERIES, II.

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**REOPENING.**

OF SETTLEMENT OF LONGEVITY PAY. *See* ARMY, 154.

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**REPATRIATION OF SPANISH PRISONERS.**

*See* TREATIES, 52-54.

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**REPRESENTATIVES.**

*See* CONGRESS, IV; CONTRACTS, 53-54; NAVAL ACADEMY, 24-28.

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**REPRIEVE.**

Guiteau, Charles J.—Upon examination of the papers accompanying an application made to the President asking for the appointment of a commission to examine and consider the mental condition of Charles J. Guiteau, and praying for his reprieve pending the investigation: *Advised*, for reasons stated, that the application be not granted. 17 Op. 394

**RES ADJUDICATA.**

The principle of *res adjudicata* applies to departmental action of a final nature. 20 Op. 280.

**RESCISSION.**

OF CONTRACT. See CONTRACTS, IV.

**RESERVED PERCENTAGE FUND.**

See CONTRACTS, 117.

**RESERVATIONS AND PARKS.**

I. In General, 1-4.

II. Military, 5-34.

III. Naval, 35-36.

IV. Forest, 37-43.

V. Light-House, 44-47.

**I. Generally.**

1. **Restoration to public domain**—Authority of Congress required.—Public lands once reserved by the President for military or other purposes, and no longer needed for such purposes, can not be restored to the public domain without authority from Congress. (16 Op. 123; 10 Op. 360.) 17 Op. 168.

2. **Hot Springs**.—The Secretary of the Interior has power, under the act of December 16, 1878 (20 Stat. 258), to lease sites upon the Hot Springs Reservation in Arkansas for the term of five years, and to relet the premises for the same term, from time to time, as the leases expire. 18 Op. 266.

3. **Same**.—Upon the facts stated: *Advised* that the Secretary may accept a surrender of a lease of a bath-house site heretofore made to S, and cancel the same, and then enter into a new lease of the premises with the same party for the term of five years. *Ib.*

4. **Same**.—During the term of the lease, and while the tenant is in possession under the same, he may remove from the premises whatever improvements he has erected thereon for the purposes of trade, whether machinery or buildings; but if he leaves the premises

without removing such improvements, and the Government should take possession, they would become the property of the latter. *Ib.*

**II. Military.**

5. **Jurisdiction**.—Writs issued by the courts of Minnesota run into and upon the military reservation of Fort Snelling, in that State. 17 Op. 1.

6. **Fort Brady**—Title to site for.—Upon the facts submitted, which are set forth in the opinion: *Advised* that, under the deed of Thomas Ryan and wife, dated December 18, 1866, granting to the United States certain land at Sault Ste. Marie, Mich., selected for a new site for Fort Brady, the title to the premises has become vested in the United States. 19 Op. 137.

NOTE.—An action of ejectment was subsequently brought by the United States against Thomas Ryan, in the United States circuit court for the western district of Michigan, to recover the premises conveyed by the deed of said Ryan and wife referred to in the foregoing opinion, and verdict and judgment went in favor of the Government. The case was afterwards carried by writ of error to the Supreme Court, which affirmed the judgment of the court below. (See *Ryan v. United States*, 136 U. S. 68.)

7. **Fort Brown Reservation**—Acquisition of title to.—The provisions of the act of March 3, 1885 (23 Stat. 507), which appropriated a large sum of money "to enable the Secretary of War to acquire good and valid title for the United States to the Fort Brown Reservation, Tex., and to pay and extinguish all claims for the use and occupation of said reservation by the United States;" with a proviso that no part of said sum shall be paid "until a complete title is vested in the United States," and that "the full amount of the price, including rent, shall be paid directly to the owners of the property," do not authorize acquisition of title by condemnation under the eminent domain power of the United States. 18 Op. 327.

8. **Same**.—Claims of ownership of the property, or some portion thereof, having been asserted by different parties, who propose to convey the same to the Government, their titles respectively, at the request of the Sec-

retary of War, examined and considered by the Attorney-General, who indicates in his opinion the persons by whom and points out the mode by which a good and valid title to the whole of the reservation can be conveyed to the United States and all claims for the use and occupancy thereof extinguished, as contemplated by the said act of 1885. *Ib.*

9. **Same—Title.**—Deed of conveyance executed by James Stillman and Thomas Carson (the latter as administrator with the will annexed of Maria Josefa Cavazos, deceased), dated May 12, 1886, and deed of release executed by Kate M. Combe and others, by their attorney in fact, James B. Wells, jr., dated April 17, 1886, not deemed sufficient to impart a valid title to the whole of the Fort Brown Reservation, for reasons stated. 18 Op. 400.

10. **Same.**—The deed of conveyance to the United States from James Stillman and Thomas Carson, administrator, etc., dated October 14, 1887, which is offered for the acceptance of the Government (together with the quitclaim deed of S. Josephine Allen, dated October 24, 1887, the quitclaim deed of Francis J. Hale *et al.*, dated November 15, 1887, the quitclaim deed of William H. Hale, dated December 3, 1887, and the quitclaim deed of Thomas Carson, dated December 12, 1887, mentioned in the opinion), are sufficient to pass a valid title to the tract of land known as the Fort Brown military reservation in Texas, and to extinguish all claims for the use and occupancy of said reservation by the United States. 19 Op. 83.

11. **Fort Keogh.**—The Northern Pacific Railroad Company has no interest in any of the lands within the boundaries of the Fort Keogh military reservation, excepting the right of way therein granted to that company by the second section of the act of July 2, 1864 (13 Stat. 367), to the extent of 200 feet in width on each side of its road, including all necessary ground for station buildings, workshops, depots, etc. 18 Op. 357.

12. **Fort Missoula Military Reservation.**—The President had full authority to make the Executive order of August 5, 1878, adding 50 acres of land to the Fort Missoula Military Reservation in Montana, notwithstanding such reservation was originally within the territorial limits of Oregon, and notwithstanding also the act of February 14, 1853 (10 Stat. 158), which

provided that all reservations thereafter made under the act of September 27, 1850 (9 Stat. 500), applicable only to Oregon, should, as to forts, be limited not to exceed 640 acres at any one place, and the further act of May 26, 1864 (13 Stat. 85), creating the Territory of Montana and declaring that all laws of the United States not locally inapplicable should have full force and effect within that Territory as elsewhere in the United States. 19 Op. 370.

13. **Same.**—The act of 1864 was intended to give effect in Montana only to such general laws of the United States as were not inapplicable to that Territory, and not to legislation of a special or local character, and did not make applicable to Montana the act of 1853, limiting the size of reservations. *Ib.*

14. **Same.**—While the President's order remains unrevoked the land covered by it is not open to entry or settlement. *Ib.*

15. **Fort Selden, N. Mex.**—License for construction of irrigating ditch through.—The Secretary of War may, under well-considered restrictions, grant a revocable license for the construction and maintenance of an irrigating ditch through the military reservation at Fort Selden, N. Mex., the licensee to furnish free to the United States all water required for military purposes. 19 Op. 628.

16. **Fort Union—Removal and sale of buildings.**—The United States has a right to remove or sell buildings or improvements erected or made on what was supposed to be the public domain, used as a military reservation and known as Fort Union, but which afterwards proved to be covered by a Mexican land grant, and had been subsequently patented by the owner, the laches or mistake of the Government officers in regard to the ownership of the land being no bar to the Government's right in the premises. 20 Op. 284.

17. **Same.**—An application should be made to Congress to authorize said disposition of the buildings, etc., as neither the President nor the Secretary of War has authority to dispose of the same. *Ib.*

18. **Same.**—Where land established as a military reservation includes the private claim of an individual, which was subsequently discovered and the use of the reservation discontinued, and upon the land are erected some twenty-two buildings, but in

the patent issued to the claimant there was a clause reserving to the United States its rights to ownership in the buildings: *Held* that the ownership of the buildings was in the United States. 20 Op. 603.

**19. Tybee Island Military Reservation—Exclusive jurisdiction of the United States—Service of State process.**—An act of the State of Georgia, passed December 22, 1808, provided that from and after the passage of that act the Congress of the United States shall have and maintain jurisdiction in and over all the lands they have acquired, or may hereafter acquire, for the purpose of erecting forts and fortifications in that State. In 1875 the United States acquired by purchase from a citizen the lands upon which is now located the military reservation on Tybee Island, in that State: *Held* that under the provisions of the act of 1808 the United States acquired and retains exclusive jurisdiction over that reservation, and the sheriff of the county within which it is situated has no power to go and serve thereon any process whatsoever issued by a court of that State. 23 Op. 254.

**20. The act of Georgia of March 2, 1874, can have no application to this reservation, for at the time of its purchase that act was not in existence, and no right on the part of the State to serve civil or criminal process thereon having been reserved, the grant of power to the United States was and is exclusive of all State authority.** *Ib.*

**21. West Point.**—The act of July 28, 1892 (27 Stat. 321), authorizing the Secretary of War to lease such property of the United States under his control as may not for the time be required for the public use, forbids an occupation which contemplates permanency or duration longer than five years. 21 Op. 537.

**22. Same.—Roman Catholic chapel.**—A revocable license, without limitation as to time, by the Secretary of War to a Roman Catholic archbishop to erect and maintain a chapel on the military reservation at West Point transcends the statute. *Ib.*

**23. Same.**—From the act of July 5, 1884 (23 Stat. 104), it may be regarded as certain that it was the view of Congress that an explicit authority was necessary for even a transient occupation of a military reservation for other than its special purpose. *Ib.*

**24. Same.**—Sections 161 and 217 of the Revised Statutes do not authorize the granting of licenses for the occupation of parts of military reservations for the erection of hotels, church edifices, etc. *Ib.*

**25. Same.**—Section 1331 has a special and partial purpose and gives no authority to dispose of the use of property. *Ib.*

**26. Ship Island—Bethel reading room.**—The Secretary of War has no authority to grant permission for the erection of a bethel, reading room, and library within the army reservation on Ship Island. (21 Op. 537 followed.) 21 Op. 565.

**27. Fort Sill Military Reservation.**—Such portion of the Fort Sill Military Reservation can be set apart as may be required for the erection of the necessary buildings to be used as a mission and school for the Apache prisoners of war. 22 Op. 303.

**28. Same.**—The Secretary of War may make such rules and regulations as shall be deemed suitable and necessary to control the methods and operations of the persons engaged in this work. *Ib.*

**29. Chickamauga and Chattanooga National Park—Acquisition by condemnation only.**—The provisions of section 3 of the act of August 19, 1890 (26 Stat. 334), entitled "An act to establish a National Military Park at the battlefield of Chickamauga," do not authorize the acquisition of the lands described therein, which are to constitute the proposed national park, in any other mode than by condemnation proceedings instituted under the act of August 1, 1888 (25 Stat. 357). 19 Op. 673.

**30. Same.**—Neither the act of August 19, 1890 (26 Stat. 333), nor the appropriation in the sundry civil act of March 3, 1891 (26 Stat. 978), authorizes the purchase of land adjoining specified routes leading to a part of the Chickamauga and Chattanooga Military Park. 20 Op. 482.

**31. Power to grant licenses to use Government reservations.**—The open and notorious use of Government reservations by licenses for other than governmental purposes, and the long-continued exercise of the power to grant such use by the Secretary of War without legislative objection, implies the tacit assent of Congress to this custom, but it can not be maintained upon any ground except that of benefit to the public interests. 22 Op. 240.

**32. Kahauiki Military Reservation—Title to.**—By the joint resolution of Congress of July 7, 1898 (30 Stat. 750), accepting the cession of the **Hawaiian Islands** and the transfer to the United States of the ownership of all public lands therein, and by acquiring by purchase from individuals the leases held by them covering the lands comprising the military reservation at Kahauiki, Oahu Island, the United States acquired complete title to that reservation. 25 Op. 225.

**33. Los Banos Military Post—Title to.**—The title acquired from Dona Saturnina Rizal y Alonzo to certain lands at Los Banos, Laguna, P. I., for a military post, will be good, the land in question having been made the subject of possessory proceedings under the royal order of February 13, 1894, and her title thereto in fee having been upheld by the decree of the court of land claims under act No. 627, Philippine Commission, which decree binds the land and quiets the title thereto, except as to liens, claims, or rights defined in section 39 of land-registration act No. 496, Philippine Commission. 25 Op. 238.

**34. Same.**—Under articles 2 and 42 of the mortgage law, articles 24-31 of the regulations thereunder, and the royal decree of November 14, 1885, etc., nearly everything that could possibly affect the title is required to be registered, and any governmental or public claim to the land would probably be notorious. *Ib.*

### III. Naval Reservation.

**35. Administration—Property of a decedent on naval reservation at Pensacola, Fla.**—Where a resident on the naval reservation at Pensacola, Fla., died intestate, possessed of certain property which is in the hands of the commandant of the yard, the local probate court of the State may properly exercise jurisdiction over the case, and appoint an administrator to whom the commandant should deliver the property in his hands belonging to the estate. 19 Op. 176.

**36. Naval reservation, Porto Rico—Shore line.**—By proclamation of the President of June 26, 1903, the following-described lands were reserved for naval purposes: "All public lands, natural, reclaimed, partly reclaimed, or which may be reclaimed in the island of Porto Rico, embraced within the

following boundaries." The boundaries to the north and west are definitely described. On the south it was to be bounded by "the shore of the harbor, and to extend east 2,400 feet, more or less, to include 80 acres." The eastern boundary was not defined: *Held* that this area can not be made up in part of submerged lands or harbor areas which may be reclaimed, but that the southern boundary should run along the present shore of the harbor, extending as far easterly as is necessary to include 80 acres within the area described. 25 Op. 172.

RESTORATION TO PUBLIC DOMAIN. *See PUBLIC LANDS, XIV.*

### IV. Forest.

**37. A criminal prosecution will lie to punish a person who grazes sheep in a forest reservation in violation of the regulations promulgated by the Secretary of the Interior pursuant to the provisions in the sundry civil act of June 30, 1898 (30 Stat. 35), applicable thereto.** 22 Op. 266.

**38. Same.**—Congress has the right to place the control of the occupancy and use of forest reservations in the hands of the Secretary of the Interior for their preservation, and to provide that any occupancy or use in violation of the rules and regulations adopted by him shall be punished criminally. *Ib.*

**39. The right of forest supervisors and rangers to arrest persons violating the laws or the rules and regulations for the protection of forest reservations being doubtful, it is suggested that relief must be had through Congressional action.** 22 Op. 512.

**40. Prohibition of hunting.**—The Secretary of the Interior can not, without express authority of law, prescribe rules and regulations by which the national forest reserves may be made refuges for game, or by which the hunting, killing, or capture of game thereon may be forbidden. 23 Op. 589.

**41. Same.**—Neither the act of June 4, 1897 (30 Stat. 11, 34), nor the act of March 3, 1899 (30 Stat. 1095), nor any other provision of law, confers upon the Secretary of the Interior this power. *Ib.*

**42. Forest reserve, Alexander Archipelago, Alaska—Permit for use and occupancy.**—The Secretary of Agriculture has authority under

the act of June 4, 1897 (30 Stat. 35), to grant a permit for the use and occupancy of certain land within the Alexander Archipelago Forest Reserve, Dall Island, Alaska, for the purpose of conducting a fish saltery, oil, and fertilizer plant. 25 Op. 470.

43. *Same.*—The Secretary may grant such privilege for a longer period than one year, and may charge and collect a reasonable sum for the privilege granted. *Ib.*

*See also* PUBLIC LANDS, VII, 26-30, and LETTER OF ATTORNEY-GENERAL KNOX TO HON. JOHN F. LACY (H. Doc. 321, 57th Cong., 1st sess., Ser. No. 4337).

#### V. Light-House.

44. A tunnel constructed in the manner proposed by the Staten Island Rapid Transit Railroad Company across a part of the light-house grounds at New Brighton, Staten Island, is within the provision of the act of February 9, 1881 (21 Stat. 324), granting right of way through said grounds. 18 Op. 76.

45. The Secretary of the Treasury has no authority to grant or lease a right of way through the light-house reservation at Cape May, N. J., to the Delaware Bay and Cape May Railroad Company for the consideration of free passage by such road to all officers and employees of the light-house establishment. 20 Op. 527, 537.

46. *Same.*—The "lease," as it is termed, operated only as a revocable license and did not carry any estate in the land in question. *Ib.*

47. *Same.*—The Secretary of the Treasury has power to revoke the license at pleasure and to remove the property of the company from the reservation upon its failure after reasonable notice to do so. *Ib.*

INDIAN RESERVATIONS. *See* INDIANS, II, a. RESERVATION OF PUBLIC LANDS FOR IRRIGATION PURPOSES. *See* PUBLIC LANDS, 41.

#### RESIDENCE.

*See* CIVIL SERVICE, 69, 70.

#### RESIGNATION.

*See* ARMY, II, c; NAVAL ACADEMY, 14-16; CIVIL SERVICE, 97.

#### RESTORATION.

OF LANDS TO THE PUBLIC DOMAIN. *See* PUBLIC LANDS, XIV.

#### RESURVEY.

OF PATENTED LANDS. *See* PUBLIC LANDS, IV.

#### RETAINED PAY.

OF SOLDIERS. *See* TREASURY DEPARTMENT, 131.

#### RETIREMENT AND RETIRED OFFICERS.

ARMY OFFICERS. *See* ARMY, II, 67, 86, 92-118, 160-163.

NAVY OFFICERS. *See* NAVY, II, c.

OFFICERS OF THE MARINE CORPS. *See* NAVY, III, c.

OF JUDGES. *See* COURTS, 24.

OF CIRCULATION. *See* BANKS AND BANKING, III.

#### RETURN CERTIFICATE.

*See* CHINESE, II, c.

#### RETURN POSTAGE CLEARING COMPANY.

*See* ATTORNEY-GENERAL, 90; POSTAL SERVICE, 123-129.

#### REVENUE-CUTTER SERVICE.

*See* REVENUE MARINE.

#### REVENUE LAWS.

*See also* INTERNAL REVENUE; CUSTOMS LAWS.

## REVENUE MARINE.

## I. In General, 1-10.

## II. Officers, 11-21.

## I. In General.

1. **Revenue-Cutter Service**—Not transferred to Department of Commerce and Labor.—The act of February 14, 1903 (32 Stat. 825), giving the Department of Commerce and Labor jurisdiction and control of the seal fisheries does not transfer to that Department the Revenue-Cutter Service or any of its vessels or officers. 25 Op. 4.

2. The **Secretary of the Treasury** is not authorized by said act, or otherwise, to assign revenue vessels to the duty of seal protection. *Ib.*

3. **Same.**—Vessels assigned by authority of the President to the protection of the seal fisheries will henceforth, while so assigned, be subject to the direction of the Secretary of Commerce and Labor in respect to those duties, but their internal government and duties concerning the revenue while thus engaged will be under the Secretary of the Treasury. *Ib.*

4. **Same.**—Appropriations for the Revenue-Cutter Service will continue to be expended by the Secretary of the Treasury, except such portions, if any, as may be applied to extraordinary business concerning seal protection, which latter will be under the control of the Secretary of Commerce and Labor. *Ib.*

5. **Revenue cutters cooperating with the Navy—Pension.**—The revenue cutters employed in carrying out the order issued by President Lincoln to the Secretary of the Treasury, dated June 14, 1863 (set forth in the opinion), were, while so employed, cooperating with the Navy by order of the President; and if any of the officers or seamen thereof, during such employment, were wounded or disabled in the discharge of their duty, they became entitled to be placed on the Navy pension list at the same rate of pension and under the same regulations and restrictions as are provided by law for the officers and seamen of the Navy. 19 Op. 505.

6. **Marine-Hospital fund.**—Sick seamen of the Revenue-Cutter Service are entitled to the benefit of the Marine-Hospital funds provided for sick and disabled seamen. 21 Op. 340.

7. **Same.**—The Treasury Department is obliged, under existing laws, to extend the benefits of the Marine-Hospital fund to the sick and disabled officers and seamen of the Revenue-Cutter Service. 21 Op. 365.

8. **Reimbursement of Navy Department for supplies furnished the Revenue-Marine Service.**—No legal obstacle exists against reimbursing the appropriation for the Navy Department from the appropriation for the Revenue-Marine Service with the cost of such heavy ordnance and ordnance stores as may be furnished by that Department to be used in said service. 17 Op. 480.

9. **Same.**—Where one Department receives from another Department supplies which are within the scope of appropriations belonging to each, a reimbursement of the appropriation of the one from the appropriation of the other of the cost of such supplies is not a violation of section 3678, Revised Statutes; nor do the provisions of 3618, Revised Statutes, apply to such case. *Ib.*

10. The question submitted as to whether the service of one Charles Whitman on the revenue steamer Johnson was that of a civilian employee or an enlisted man involves certain matters of fact in regard to which additional information is requested. 22 Op. 189.

## II. Officers.

11. **Chief Engineers—Appointment—Pay.**—The provision of the act of June 4, 1897 (30 Stat. 17), that certain chief engineers of the Revenue-Cutter Service "shall be eligible for appointment to the office of captain of engineers in said service, with the pay and emoluments of such captain," creates the office of captain of engineers, with the same pay as that of a captain of the revenue service. The appointment is to be made from the chief engineers who have held the office of engineer in chief, and be made by the President, by and with the advice and consent of the Senate. 21 Op. 551.

12. **Same.**—The word "such" ordinarily refers to the next immediate antecedent, but not necessarily; never when the purpose of the section in which it is used would thereby be impaired. *Ib.*

13. **Assistant engineers—Appointment.**—Under the law at present in force, assistant



engineers in the Revenue-Cutter Service should be appointed by the President with the concurrence of the Senate. 17 Op. 532.

14. **Same.**—It is a general rule that, where there is no express enactment to the contrary, the appointment of any officer of the United States belongs to the President by and with the advice and consent of the Senate. *Ib.*

15. **Same.**—Section 2751, Revised Statutes, which declares that "the commissioned officers of the Revenue-Cutter Service shall be appointed by the President, by and with the advice and consent of the Senate," is a re-enactment of a similar one contained in the act of 1863 (12 Stat. 639), and was probably intended to embrace all the officers of the Revenue-Cutter Service described in section 2749 other than those thereclassified as petty officers. *Ib.*

16. **Permanent waiting orders—Restoration to service in former rank.**—Under the act of March 2, 1895 (28 Stat. 910, 920), officers of the Revenue-Cutter Service who have been placed upon permanent waiting orders are withdrawn from the line of promotion, but may be restored to the service in their former rank when their disability ceases. 21 Op. 286.

17. **Same.**—There is no legal limitation of the number of officers who may be placed upon permanent waiting orders. *Ib.*

18. **Same.**—An officer is "permanently incapacitated" within the meaning of this act, as of the pension acts, when his disability appears to be chronic or of indefinite future duration. *Ib.*

19. **Mileage.**—An officer of the Revenue-Cutter Service is not entitled to mileage for travel on duty, but may be allowed actual traveling expenses. 18 Op. 121.

20. **Accounts of officers—Oath.**—The Secretary of the Treasury has power, under section 161, Revised Statutes, to make a regulation which prescribes that the oaths to be taken by an officer of the Revenue-Marine Service, or an officer or employee in any branch of the customs service, to the correctness of his account for pay or salary, as required by sections 1790 and 2693, Revised Statutes, shall be taken before some person authorized to administer oaths generally. 19 Op. 401.

21. **Same.**—The fee paid by the officer or employee in such case for administering the oath does not constitute a proper charge against

the United States, and if charged in his account should not be allowed in the settlement thereof. *Ib.*

MERCHANT MARINE. See SHIPPING, I, g.

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### REVOCATION.

OF LICENSE. See STEAMBOAT-INSPECTION SERVICE, 23-26; LICENSE.

OF POWER OF ATTORNEY. See POWER OF ATTORNEY, 1, 4.

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### REWAREHOUSING.

See CUSTOMS LAW, 115, 116.

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### RHODE ISLAND.

The State of Rhode Island is not a person, corporation, or association within the meaning of sections 4 and 5 of the river and harbor act of September 19, 1890 (26 Stat. 453). Consequently the Secretary of War is not authorized to serve notice on the State of Rhode Island requiring it to alter the bridge over the Sakonnet River, Rhode Island, which bridge is the property of that State. 20 Op. 606.

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### RIGHT OF WAY.

See INDIANS, 47, 48.

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### RIO GRANDE RIVER.

See NAVIGABLE WATERS, 165, 166; MEXICO, 1-6.

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### RIPARIAN RIGHTS.

See NAVIGABLE WATERS, 76, 78.

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### RIVERS.

ABANDONMENT OF CHANNEL. See INDIANS, 36.  
See also NAVIGABLE WATERS, II, III.

**ROCK CREEK PARK.**

*See* DISTRICT OF COLUMBIA, V.

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**ROCK ISLAND BRIDGE.**

*See* NAVIGABLE WATERS, 137-139, and  
BRIDGES.

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**ROYALTY.**

*See* CLAIMS, 74, 75; ARMAMENT AND FORTIFI-  
CATIONS.

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**SAILORS.**

PREFERENCE IN CIVIL APPOINTMENTS. *See*  
CIVIL SERVICE, V.

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**ST. LOUIS RIVER.**

*See* NAVIGABLE WATERS, 167.

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**ST. PAUL AND ST. GEORGE ISLANDS.**

*See* SEAL FISHERIES, 11-16.

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**SALARIES.**

OF AGENTS EMPLOYED BY THE DEPARTMENT  
OF AGRICULTURE. *See* DEPARTMENT OF  
AGRICULTURE, 30.

OF INSPECTORS OF IMMIGRATION. *See* IMMI-  
GRATION, 28.

OF FEDERAL JUDGES. *See* COURTS, 3.

OF DECEASED RETIRED ARMY OFFICERS. *See*  
ARMY OFFICERS, 68.

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**SALE.**

OF LAND IN THE DISTRICT OF COLUMBIA, CON-  
VEYANCE. *See* DISTRICT OF COLUMBIA, 15.

OF MATERIALS, SUPPLIES, AND EQUIPMENT.  
*See* ISTHMIAN COMMISSION.

OF STEAM TUG "ELIHU." *See* HAWAII 41.

OF WINDMILL AT LYNNHAVEN, VA. *See* DE-  
PARTMENT OF COMMERCE AND LABOR, 23.

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**SAMOA.**

1. The President may lawfully use such  
part of the appropriation of \$500,000 provided  
in the act of February 26, 1889 (25 Stat. 699),  
in making and executing contracts for the  
control of such property in Pago Pago Harbor,  
Samoa, whether by lease or purchase, as may  
in his judgment be necessary for the protection  
of the interest of the United States. 20 Op.  
484.

2. The construction of a pier, required in  
providing a naval and coaling station for the  
United States in the harbor of Pago Pago, is  
within the intent of Congress as expressed in  
the paragraph of the sundry civil appropri-  
ation act of August 5, 1892 (27 Stat. 349),  
containing the following provision: "For  
providing naval and coaling stations, \$250,000,  
to be expended under direction of the  
President;" and such portion of the \$250,000  
as may be needed for building the pier may  
be lawfully used whenever the President  
shall so direct. 20 Op. 553.

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**SAMPLE PACKAGES.**

*See* CONTRACTS, 74.

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**SAN PEDRO HARBOR.**

*See* NAVIGABLE WATERS, 87-93.

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**SAVANNAH RIVER.**

*See* NAVIGABLE WATERS, 50.

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**SAVINGS.**

OF ENLISTED MEN. *See* NAVY, 10.

**SCHOOL-FARM LANDS.**

INVESTMENT OF PROCEEDS OF SALE OF. *See*  
TRUST FUNDS.

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**SCIENTIFIC APPARATUS.**

*See* CUSTOMS LAW, 232.

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**SCRAP TOBACCO.**

DUTY ON. *See* CUSTOMS LAW, 206.

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**SEAL FOR CENSUS OFFICE.**

*See* DEPARTMENT OF COMMERCE AND LABOR,  
33.

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**SEAL FISHERIES.**

I. In General, 1-10.

II. Lease, rental, 11-24.

III. Regulations, 25.

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**I. In General.**

1. **Remission of forfeiture of a vessel condemned.**—Section 1958, Revised Statutes, does not confer upon the Secretary of the Treasury authority to remit the forfeiture of a vessel condemned by the United States district court for Alaska for being engaged in killing fur seals. 18 Op. 584.

2. **Same.**—Under section 5293, Revised Statutes, fifth paragraph, he has power to remit in such case, but only where the forfeiture was imposed "by virtue of any provisions of law relating to fur seals upon the islands of St. Paul and St. George." *Ib.*

3. **Same.**—Opinion of March 19, 1887 (18 Op. 584), namely, that the Secretary of the Treasury has no power to remit the forfeiture of a vessel condemned for being engaged in unlawfully killing fur seals (the case not arising in either of the islands St. Paul and St. George), reaffirmed. 19 Op. 5.

4. **Assignment of revenue vessels—Seal protection.**—The Secretary of the Treasury is not authorized by the act of February 14, 1903 (32 Stat. 825), or otherwise, to assign revenue vessels to the duty of seal protection. 25 Op. 4.

5. **Same.**—Vessels assigned by authority of the President to the protection of the seal fisheries will henceforth, while so assigned, be subject to the direction of the Secretary of Commerce and Labor in respect to those duties, but their internal government and duties concerning the revenue while thus engaged will be under the Secretary of the Treasury. *Ib.*

6. **Same.**—Appropriations for the Revenue-Cutter Service will continue to be expended by the Secretary of the Treasury, except such portions, if any, as may be applied to extraordinary business concerning seal protection, which latter will be under the control of the Secretary of Commerce and Labor. *Ib.*

AUTHORITY OF THE SECRETARY OF THE TREASURY IN REGARD TO LEASES AND RENTALS.  
*See* II.

7. **License.**—Vessels engaged in fur-seal fishing in waters other than those covered by the award of the Paris Tribunal and the act of Congress of April 6, 1894 (28 Stat. 52), are not required to be licensed. 21 Op. 239.

8. **Indian rights.**—The Makah Indians are prohibited, as other persons generally, by the act of April 6, 1894 (28 Stat. 52), from killing seals at a time and in a certain part of the Pacific Ocean named in the act, and the only right they can claim is that of sealing in the particular manner and places permitted in explicit terms by section 6 of the act to coast Indians generally. 21 Op. 466.

9. **Remission of tax on skins taken from seals killed by natives for food.** 20 Op. 407.

10. **Administrative duty imposed upon the Secretary of the Treasury in regard to the protection of fur seals.**—A request for an opinion failing to state definite facts showing by what persons, in what manner, and during what period of the year fur seals are being killed in the passes of the Aleutian Islands, it is impossible to determine whether the administrative duty imposed upon the Secretary of the Treasury by section 1956, Revised Statutes, is or is not qualified by the provisions of the act of April 6, 1894. 21 Op. 583.

## II. Lease; Rental.

11. The Secretary of the Treasury derives no authority, under section 1963, Revised Statutes, to make a new lease of the right to take fur seals on the islands of St. Paul and St. George, in Alaska, until the expiration of the existing lease. 19 Op. 432.

12. Same.—The donee of a statutory power can only make a valid execution of such power by a strict compliance with the statutory grant. *Ib.*

13. North American Commercial Company—Reduction in yearly rentals.—The Secretary of the Treasury has the power under the existing lease by the United States to the North American Commercial Company of the right of taking fur-seal skins on the islands of St. Paul and St. George, Alaska, to make a reduction of the yearly rental for the year ending May 1, 1891, proportionate to the reduction made by him below the limit named in the lease of the number of seals which said company has been permitted to kill on these islands. 20 Op. 51.

14. Same.—The Secretary of the Treasury is authorized to put such a construction upon a lease with the North American Commercial Company, in regard to taking fur seals on the islands of St. Paul and St. George, Alaska, as will give effect to the common intention of both of the parties thereto, even if such a construction is at variance with its strict legal interpretation. 20 Op. 62.

15. Same.—The Secretary of the Treasury may therefore treat the standard catch under said lease as 100,000 seals, and, in case of a reduction by him to 60,000 for the first year's catch, may make a corresponding reduction in the rent for that year. *Ib.*

16. Same.—The Secretary of the Treasury has the same authority to make a reduction in the rate per skin to be paid by the lessee of the seal fisheries at the islands of St. George and St. Paul that he has in the case of the other stipulated rental in the lease. 20 Op. 510.

17. Same.—The Secretary of the Treasury has no power under the law now in force to abate the rent provided for in the lease of March 12, 1890, to the North American Commercial Company, nor has he the right to reduce the amount of the bonus of \$7.62½ provided for in said lease to be paid upon each skin taken

and shipped; the abatements hitherto made were without authority of law, and the balance of the annual rental and of the bonus of \$7.62½ per skin not heretofore paid by the lessee, is still due to the United States and recoverable by it. (20 Op. 51, 62, and 510 dissented from). 20 Op. 634.

18. Same.—It is competent for the United States to recover by proper legal proceedings the difference between the amounts actually received as rent and bonus from the seal fisheries and the amounts called for by the terms of the lease as rent and bonus for the same years, notwithstanding the action of a prior Secretary of the Treasury in reducing sums due under the lease by what his estimate was of the lessee's claims for damage, inasmuch as it appears such claims were not legal and valid. Such action of the prior Secretary, even if it binds his successor, as to which *quære*, does not conclude the United States. 20 Op. 732.

19. Same.—The tax of \$2 prescribed by section 1969, Revised Statutes, can not be remitted to the North American Commercial Company upon skins taken from seals killed on the islands of St. George and St. Paul, Alaska, by the natives for food, and shipped by that company. 20 Op. 407.

20. Same—Security to amount of indebtedness.—The Secretary of the Treasury can not rightfully require of the North American Commercial Company to furnish, in addition to the deposit of \$50,000 in bonds of the United States already made pursuant to section 1963, Revised Statutes, security to the amount of the indebtedness of the company for the years 1894 and 1895. 21 Op. 177.

21. Same.—The North American Commercial Company is liable to the United States for interest upon the several sums overdue for the years 1894–1897, inclusive, on account of taxes, rentals, and bonus under its lease of the Pribilof Islands from the United States. 22 Op. 172.

22. Same.—Where money is due and payable on a contract at a specified time and is withheld, the creditor is entitled to demand and receive interest at the rate prevailing in the forum where suit is brought except as against the Government of the United States and sovereign States. *Ib.*

23. Same.—In an action for use and occupation or for mesne profits, where the recovery

is of a sum in the nature of rent, interest is allowed on each annual sum from the end of the year. *Ib.*

24. *Same.*—The claim of the United States against the North American Commercial Company for interest, involving disputed questions of law and fact, is clearly one subject to compromise. 23 Op. 631.

### III. Regulations.

25. A regulation of the Secretary of the Treasury prescribing that only a certain race or class of people shall have the privilege of killing sea otter within a certain area would be a violation of section 1915, Revised Statutes, as being a grant of a special privilege. 21 Op. 333.

PROTECTION OF SEALS. *See* 4-6,  
REMISSION OF FORFEITURE. *See* 1-3.  
SEIZURE OF VESSELS. *See* Seizure.

### SEA OTTER.

*See* SEAL FISHERIES, 25.

### SEALED CARS.

*See* CUSTOMS LAWS, III, i.

### SEALED INSTRUMENTS.

*See* DATE.

### SEALS.

*See* CONTRACTS, 166, 167.

### SEAMEN.

1. Alien seamen—Officer of an American vessel.—An alien seaman, though he has declared his intention to become a citizen of the United States, and has served three years on vessels of the United States, is ineligible to the position of an officer of an American

vessel. For that full citizenship is required. (Sec. 2174, Rev. Stat.) 17 Op. 534.

2. Seamen in the Coast and Geodetic Survey.—The shipping commissioners' act of June 7, 1872 (17 Stat. 262), now embraced by Title 53, Merchant Seamen, Revised Statutes, has no application to seamen employed on vessels engaged in the service of the Coast and Geodetic Survey. 19 Op. 182.

3. Payment of advance wages to seamen.—The provisions of section 10 of the act of June 26, 1884 (23 Stat. 55), prohibiting the payment of advance wages to seamen hired in our ports, in so far as those provisions apply to foreign shipping, are not in conflict with the stipulations of article 8 of the consular convention with France of February 23, 1853. (10 Stat. 996). 18 Op. 253.

4. *Same.*—Nor do such provisions come in conflict with any rights which, upon principles of international law, other nations are entitled to exercise within our ports as regards their merchant vessels. *Ib.*

5. *Same.*—The provisions extend to French captains who hire French sailors in the ports of the United States. *Ib.*

6. The scale of provisions prescribed to be furnished seamen, as by section 23 of the act of December 21, 1898 (30 Stat. 762), must be printed in the copy of shipping articles for coastwise steamers and posted. 22 Op. 349.

7. A shipping commissioner has no authority to ship seamen on "sail or steam vessels engaged in the coastwise trade," unless such vessels come within the exceptions of the act of June 9, 1874 (18 Stat. 64); nor will the consent of the master and seaman operate to give such authority. 18 Op. 54.

8. Fees.—While he should not receive fees for shipping seamen on coasting vessels not within said exceptions, yet he could not be prosecuted under the act of June 7, 1872 (17 Stat. 262), for so doing. *Ib.*

9. Should such fees be received by him, they would not have to be accounted for to the Secretary of the Treasury under section 27 of the act of June 26, 1884 (23 Stat. 59). *Ib.*

10. Fees for providing employment for seamen.—Section 4609, Revised Statutes, which forbids the demanding or receiving from any seaman or other persons seeking employment as a seaman any remuneration for providing him with employment other than the fees authorized by law, does not extend to sea-

men employed on vessels engaged in the coasting trade generally. 21 Op. 284.

**11. Food and clothing furnished shipwrecked seamen.**—Where a United States consul-general has provided shipwrecked, destitute seamen with food, clothing, and passage to a port in this country, the amount so expended should not be deducted by a United States shipping commissioner in this country, from the wages of such seamen paid by the owners of the vessel. 21 Op. 25, 34.

**12. Marine-Hospital fund.**—Sick seamen of the Revenue-Cutter Service are entitled to the benefit of the Marine-Hospital fund provided for sick and disabled seamen. 21 Op. 340.

**13. Seamen born in the Philippines not citizens of the United States.**—Seamen born in the Philippine Islands, being persons whose civil and political status is, by the treaty of peace with Spain (30 Stat. 1759), declared to be a matter for future determination by Congress, are not citizens of the United States within the meaning of any statute concerning seamen, or any other statute or law of the United States. 23 Op. 400.

**14. Same—Cuban seamen.**—The same thing is true, in a more obvious way and with greater force, of Cuban seamen. *Ib.*

**15. Porto Rican seamen are American seamen.**—A Porto Rican engaged in the occupation of a seaman in the American merchant marine, including that of Porto Rico, is an American seaman within the meaning of the statutes relating to relief by consuls, in view of the provisions of sections 9 and 14 of the act of April 12, 1900 (31 Stat. 79), providing a civil government for Porto Rico. *Ib.*

**16. Relief of American seamen—Who are entitled.**—All persons shipped in the United States on an American vessel have been, according to the practice of the Government, treated as entitled to relief under the laws relating to seamen. *Ib.*

**17. Same.**—A place at which vessels of the United States receive their character as such, and where American shipping commissioners ship the crews of such vessels, is to be regarded as a place such that a person domiciled there and engaging in the occupation of a seaman on vessels of that character is an American seaman within the intent of the provisions for the relief and protection, in foreign countries, of American seamen. *Ib.*

**18. Section 4598, Revised Statutes, with reference to seamen absenting themselves from vessels without leave from the proper officer, when their contract to perform the voyage is signed before a shipping commission, does not apply to seamen or vessels engaged in the coastwise trade unless, as under section 4520, Revised Statutes, such vessel is of 50 tons burden or upward.** 21 Op. 483.

**19. Discharge by United States consul-general.**—The United States consul-general at Panama was justified in discharging a seaman where both master and seaman requested it, and where, although no unusual or cruel treatment was claimed, yet from the evident ill will displayed by the master he had reason to fear that such treatment would supervene. 22 Op. 212.

**20. Same.**—The master of the vessel had no legal right to impose and collect a fine of twelve days' wages because said seaman refused to work two days when he was intoxicated or ill from the effect of such intoxication. *Ib.*

**21. Same.**—If the seaman was discharged because of unusual or cruel treatment, he is entitled to the one month's extra wages allowed by statute, and in such cases the consul-general is authorized to exercise some reasonable discretion in determining this extra allowance, in reference to actual or anticipated ill treatment. *Ib.*

**22. When a consul intervenes in a controversy between master and seamen, by mutual consent of the disputants, he acts as an arbitrator and not as consul.** 21 Op. 201.

**23. Immigration laws.**—Bona fide seamen have always been excepted from the operation of our immigration laws, although not excepted therefrom by express language; their inclusion in the class of alien immigrants can fairly be regarded as beyond the intention of Congress. 23 Op. 521.

**24. Same.**—Only such seamen are excepted from the class of passengers upon whom the head-money tax is imposed by the act of August 3, 1882 (22 Stat. 214), and from the class of alien immigrants, as are seamen in good faith and have no intention, by reason of their passage, to leave the ship and make entry into this country. *Ib.*

**25. Deserting seamen—Alien immigrants.**—Aliens who become seamen for the purpose of securing an entrance into this country free from the barriers of the immigration statutes

are none the less alien immigrants, and may be deported if within the prohibited classes. *Ib.*

26. An "alien seamen" is one who, in pursuit of and as a necessary incident to his calling, temporarily enters this country and is awaiting his departure; while an "alien immigrant" is one who enters the country with the intention of remaining in it. *Ib.*

27. **Transfer of Chinese crew in port of the United States.**—A Chinese crew which shipped at Hongkong on a vessel belonging to a company chartered under the laws of the United States, for a trip to San Francisco and return by the same vessel, or any other vessel belonging to that company, which crew, owing to an accident to the ship, was brought to San Francisco on a vessel belonging to a different company, may be transferred to another vessel substituted for the one injured, after having duly signed for that service before a United States shipping commissioner. 24 Op. 111.

28. **Same.**—Such transfer would not be a violation of the alien contract labor laws. *Ib.*

29. **Same.**—The landing of the crew, temporarily, for the purpose of transfer, would not violate the treaty with China and the laws of the United States in relation to the exclusion of Chinese. *Ib.*

30. **Same.**—The Chinese exclusion laws and the alien contract labor laws have no application to seamen who, in good faith, are engaged in navigation, and who are temporarily within a port of the United States for that purpose. The transfer of the Chinese crew of the Danish steamer *Arab* to the Danish steamer *Stanley Dollar*, and of a Chinese crew from a vessel of the Pacific Mail Steamship Line to the steamer *Siberia*, of the same line, under the conditions named, would not involve a violation of either of those laws. 24 Op. 553.

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#### SEARCH WARRANTS.

*See* UNITED STATES COMMISSIONERS, 7-9.

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#### SECOND-CLASS POSTAGE.

*See* POSTAL SERVICE, 120-122.

#### SECRETARY OF AGRICULTURE.

*See* DEPARTMENT OF AGRICULTURE, II.

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#### SECRETARY OF COMMERCE AND LABOR.

*See* DEPARTMENT OF COMMERCE AND LABOR., II.

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#### SECRETARY OF THE INTERIOR.

*See* DEPARTMENT OF THE INTERIOR, II.

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#### SECRETARY OF THE NAVY.

*See* NAVY, II.

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#### SECRETARY OF STATE.

*See* DEPARTMENT OF STATE, II.

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#### SECRETARY OF THE TREASURY.

*See* TREASURY DEPARTMENT, II.

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#### SECRETARY OF WAR.

*See* WAR DEPARTMENT, II.

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#### SECRETARY TO THE ADMIRAL.

*See* NAVY, 25, 95.

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#### SECURITY.

*See* WORDS AND PHRASES.

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#### SEEDS.

*See* DEPARTMENT OF AGRICULTURE, VII.

**SEIGNIORAGE.**

*See* TREASURY DEPARTMENT, 165.

**SEIZOR.**

*See* CUSTOMS LAW, 447.

**SEIZURE.**

1. British sealing schooners, having on board prohibited and unsealed firearms, together with a large number of sealskins, were seized by American cruisers in Bering Sea and the North Pacific Ocean for alleged violations of the laws for the preservation of fur seals passed in pursuance of the award of the tribunal of arbitration at Paris, and were delivered to British naval officers, with a written statement of the facts upon which the seizures had been made, but which did not specifically assert that seals had been taken contrary to law, which officers, without in anywise invoking the action of the courts, released them, having reached the conclusion, after investigation and legal advice, that no case could be made out against them. The British Government presented claims for damages on account of such seizures. *Held* (21 Op. 234):

2. Formal charges not required of officer making seizure.—That nothing in the British statutes or in the orders and instructions issued for the due execution thereof requires any formal charge by officers making seizures. An indorsement of the grounds upon which they were seized on the certificate of the vessels is required to enable the vessels to proceed to port for trial. *Ib.*

3. The mode provided by the Bering Sea award act for dealing with vessels so seized is to subject them to legal proceedings in the British courts. Delivery to the naval authorities in place of the judicial authorities was merely for convenience, and not for the purpose of dispensing with legal proceedings or for a trial by such naval authorities instead. *Ib.*

4. A naval officer to whom delivery is made of a vessel seized under the provisions of the treaty has no authority to investigate the seizure or release the vessel. *Ib.*

5. There being nothing in the acts of either country about liability for wrongful seizures, if such liability exists it is governed by the well-settled principles of law common to both countries relative to such liability. *Ib.*

6. The right to seize, conferred by the acts of both countries, was not limited to vessels caught in the act. In all other cases action must depend upon evidence and indications. In any case where reasonable grounds for the seizure are shown there is no liability for damages on account of such seizure. *Ib.*

7. Section 1956, Revised Statutes, as amended by section 3 of the act of March 2, 1889 (25 Stat. 1009), applies to the Territory of Alaska and the waters thereof, and to all the dominion of the United States in the waters of Bering Sea. It is lawful for the Secretary of the Treasury, under said section, to direct captains of the fur-sealing fleet to seize all foreign vessels found hunting or to have hunted sea otter within said waters. 21 Op. 346.

8. The steamship *Abbey*, seized at Batangas, Philippine Islands, by Admiral Dewey, should be released to the American claimant upon stipulation that he waives all claims for damages against the United States for the seizure and detention. 22 Op. 390.

9. A threat to seize a vessel unless certain troops and ammunition are received and transported, resulting in the compulsory submission of the master of the vessel, does not constitute an impressment within the meaning of section 3483, Revised Statutes. 17 Op. 90.

OF CATTLE IN THE INDIAN TERRITORY. *See* INDIANS, 190.

OF PROPERTY IN THE INDIAN COUNTRY BY THE MILITARY AUTHORITIES FOR VIOLATION OF THE LAWS RELATING TO THE INDIANS. *See* INDIAN TERRITORY, 2, 3; INDIANS, 75, 76. SEIZURE AND DESTRUCTION OF FUR-SEALSKINS.

*See* CUSTOMS LAW, 410, 411.

**SENATE.**

*See* CONGRESS, III.



**SENTENCE.**

*See* COURT-MARTIAL, IV; ARMY, VI.

**SERVICE OF PROCESS.**

*See* UNITED STATES, 67, 68, 71, 72, 74.

**SET-OFF.**

Money paid by mistake to a person who afterwards became a postal clerk.—Where money was paid by a United States marshal, under a mistake of fact, to a person who subsequently became an officer in the postal service: *Held* that the latter is in arrears to the United States for the amount so paid, and that it may be set off against his compensation as such officer. 17 Op. 677.

*See* DIRECT TAXES; COURTS, 3.

**SETTLEMENT OF ACCOUNTS.**

*See* ACCOUNTS.

**SHEYENNE ISLAND.**

*See* INDIANS, 36.

**SHILOH BATTLEFIELD.**

A contract of option for the sale of certain lands to the officers of the Shiloh Battlefield Association, which purports to waive homestead and dower rights, although the wives of the vendors are not parties to the agreement, and also purporting to have been admitted of record, when, so far as appears on its face, it was never acknowledged or attested, etc., does not constitute a cloud upon the title. 21 Op. 302.

**SHIPPING.****I. Laws and Regulations Affecting Vessels.**

- a. *In General*, 1.
- b. *Ships' papers*, 2.
- c. *Registry*, 3-27.
- d. *License*, 28.
- e. *Anchorage*, 29.
- f. *Entry—Manifest—Clearance*, 30-32.
- g. *Merchant Marine*, 33-34.
- h. *Tide*, 35-37.

**II. Officers, 38-43.****III. Taxes, Penalties, Fees, etc.**

- a. *Penal Taxes*, 44-48.
- b. *Tonnage Taxes*, 49-71.
- c. *Head Tax*, 72-76.
- d. *Refund*, 77.
- e. *Fees*, 78-80.

**I. Laws and Regulations, etc., Affecting Vessels.****a. *In General.***

1. The expressions "vessel or ship of the United States," "American vessel of the United States," and "American vessels" are used synonymously in the Federal statutes and apply only to regularly documented vessels. 18 Op. 234.

**b. *Ships' Papers.***

2. The masters of fishing vessels, enrolled but not registered, are not required by sections 4309 and 4310 of the Revised Statutes to deposit their ships' papers with the United States consul when they arrive at a foreign port where there is such a consular officer. 21 Op. 190.

**c. *Registry.***

3. A vessel built in the United States, and owned wholly by citizens thereof, is entitled under sections 4132 and 4136, Revised Statutes, to be registered under the laws of the United States, although she may have at one time belonged to citizens of a foreign country. 17 Op. 286.

4. Employed under a foreign flag.—A registered vessel of the United States, wholly and continuously owned by a citizen of the United States, does not forfeit her privileges as such

by having been employed under a foreign flag since the rebellion. 17 Op. 443.

5. An American built vessel, wholly and continuously owned by a citizen of the United States, but as yet unregistered, may be admitted to registry, although she has sailed under a foreign flag since the rebellion. *Ib.*

6. Foreign-built registered American vessels.—The act of June 26, 1884, section 12 (23 Stat. 56), does not intend by the expression "American vessels" to include only "vessels of the United States" as defined by section 4131, Revised Statutes, but includes as well "foreign-built registered American vessels." 18 Op. 99.

7. A registered vessel of the United States which has been altered in form or burden in a foreign port may be registered anew on her arrival in the United States; but the new registry can not be made unless the ship and owners conform to the requirements necessary for an original registry. 18 Op. 560.

8. If the alteration amounts to such a substantial rebuilding of the vessel as that the owner could not truthfully make oath that it was built in the United States it would not be entitled to registry. *Ib.*

9. A foreign-built vessel wrecked in American waters and repaired in an American shipyard at an expense exceeding three-fourths of the cost of the vessel when repaired, and, after sailing under a foreign flag for several years, sold by her foreign owner to a citizen of the United States, may properly be registered under section 4136 of the Revised Statutes, which section must be construed in connection with section 4132, Revised Statutes. 20 Op. 253.

10. A British steamship, wrecked outside the limits of the United States, was finally towed to New York, and sank in or near Erie Basin. The vessel was repaired and afterwards purchased by an American citizen at three times the cost of the wreck: *Held* that the vessel was "wrecked in the United States," within the meaning of the Revised Statutes, section 4136; that the word "cost" in said section is to be construed literally, and that if the actual cost of the repairs is three times the actual purchase price of the wreck, it is entitled to registry. 21 Op. 143.

11. Same.—The word "cost" in said section is to be construed liberally, and if the actual cost of the repairs is three times the

actual purchase price of the wreck, then the vessel is entitled to registry. *Ib.*

12. Same.—In view of the express regulation and long-established practice of the Treasury Department, which have put a narrow construction on the clause "wrecked in the United States," an application, under section 4136, Revised Statutes, for registry of a foreign-built vessel wrecked and abandoned several hundred miles from the coast of the United States, and subsequently towed into the United States, where she was purchased and repaired by American citizens, the repairs amounting to more than three times the price paid for the wreck at marshal's sale, was properly denied. 21 Op. 198, reversing 21 Op. 143.

13. Same.—If any of the injuries which have made a vessel a wreck were received in the United States, in the absence of bad faith she should be held to come within the clause "wrecked in the United States," although others had been received elsewhere. *Ib.*

14. Same.—The word "wreck" in section 4136, Revised Statutes, must be taken in a very comprehensive sense as applicable to a vessel which is disabled and rendered unfit for navigation, whether this state of the vessel has been caused by the winds or the waves, by stranding, fire, explosion of boilers, or by any other casualty. *Ib.*

15. American registry—Repaired foreign-built vessel.—A foreign-built vessel, wrecked in the United States, repaired here by her foreign owners, and subsequently sold to a citizen of the United States, is entitled, under section 4136, Revised Statutes, to American registry, if the repairs made upon the vessel after the wreck equal three-fourths of the cost of the vessel when so repaired. 25 Op. 384.

Opinion of September 29, 1891 (20 Op. 253), followed. *Ib.*

16. Same.—To entitle a foreign-built vessel wrecked in the United States, repaired here by her foreign owners and sold to a citizen of the United States, to American registry it must appear that the repairs "equal to three-fourths of the cost of the vessel when so repaired" were occasioned by one wreck, section 4136, Revised Statutes, not permitting the aggregating of the cost of repairs occasioned by different wrecks in making up that amount. 25 Op. 385.

17. The *Scipio*, a foreign-built steamship purchased by the Navy Department for use in the war with Spain, and subsequently sold to and owned by an American citizen, is not entitled to registry under the laws of the United States (sec. 4132, Rev. Stat.). 22 Op. 566.

18. Same.—The regulation of commerce and navigation being entirely within the control of Congress, there is no authority for an Executive Department to make or enforce rules or regulations relative to the registry of vessels or kindred matters connected with such subjects. *Ib.*

19. The Hawaiian authorities can not in anywise certify to the national character of a vessel, as Hawaiian national character can no longer be attributed to vessels owned by inhabitants of the islands. 22 Op. 578.

20. Same.—The registration laws of Hawaii have been abrogated as a necessary consequence of its annexation to the United States. *Ib.*

21. Same.—The issuance of registry to a vessel, entitling it to carry national colors, is an act of sovereignty, although the register itself is not the only document recognized by the law of nations as indicative of the ship's national character. *Ib.*

22. American registry—Condemned prize—Reversal of decree.—Under section 4132, Revised Statutes, a vessel lawfully condemned and sold as a prize of war to an American citizen is entitled to an American registry, which is not lost by the subsequent reversal of the decree by the Supreme Court of the United States. 23 Op. 29.

23. Same.—The reversal of the decree operates only upon the fund produced by the sale of the vessel, and does not disturb the title and rights of the purchasers. *Ib.*

24. Registry of Hawaiian vessel owned by naturalized Chinaman.—Any Chinese person who was a citizen of the Republic of Hawaii on August 12, 1898, and who has not since abandoned or been legally deprived of his citizenship, is a citizen of the United States, may take the oath required by sections 4131 and 4142, Revised Statutes, and have his vessel admitted to registry as an American vessel, provided it carried an Hawaiian register on the 12th of August, 1898, and was at that time owned *bona fide* by a citizen of Hawaii or of the United States. 23 Op. 352.

25. Certificates of registry of vessels.—The duty imposed upon the Secretary of the

Treasury by section 4158, Revised Statutes, of transmitting to collectors of customs blank forms of certificates of registry of vessels was, by the act of February 14, 1903 (32 Stat. 825), transferred to the Secretary of Commerce and Labor. 25 Op. 49.

26. Same—Expense—Comptroller of the Treasury.—The question as to whether the expense of preparing such blank forms and furnishing them to collectors can be paid out of the appropriation for defraying the expenses for collecting the revenue from customs, is peculiarly one for the Comptroller of the Treasury to decide (23 Op. 468). *Ib.*

27. American registry—Steamship *Athos*.—The nonaction of the American owners of the steamship *Athos* in failing to avail of the privilege of registry conferred upon that vessel by the act of Congress of January 16, 1895 (28 Stat. 625), and the subsequent transfer of the vessel to foreign owners, who for several years sailed her under foreign flags, must be taken as a waiver of the privilege conferred by Congress, and she is not now entitled to American registry although at present owned by American citizens. 25 Op. 551.

#### d. License.

28. Vessels engaged in fur-seal fishing in waters other than those covered by the award of the Paris Tribunal and the act of Congress of April 6, 1894 (28 Stat. 52), are not required to be licensed. 21 Op. 239.

#### e. Anchorage.

29. Matters arising under the acts of May 16, 1888 (25 Stat. 151), February 6, 1893 (27 Stat. 431), March 6, 1896 (29 Stat. 54), and June 6, 1900 (31 Stat. 682), relating to anchorage and anchorage grounds, have been transferred by the act of February 14, 1903 (32 Stat. 825), from the Treasury Department to the Department of Commerce and Labor. 25 Op. 37.

#### f. Entry—Manifest—Clearance.

30. American vessel from Philippine Islands—Entry—Manifest.—An American vessel in ballast, arriving in March or April, 1902, at Port Townsend, Wash., from Manila, did not arrive from a foreign port and was not engaged in the coasting trade within the meaning of the laws requiring the making of

entry and the sending of a copy of the manifest to the Auditor. 24 Op. 27.

**31. Clearance denied because of incorrect manifest.**—A collector of customs may lawfully refuse a clearance to a vessel whose master is alleged to be amenable to the penalty provided by section 2809, Revised Statutes, for bringing into the United States merchandise not included in the manifest required and described in the preceding sections. Such refusal is not a seizure, and the act of February 8, 1881 (21 Stat. 322), is inapplicable. 17 Op. 82.

**32. Refund of entrance and clearance fees—Canadian vessels.**—The right to a refund of entrance and clearance fees improperly exacted by the collector of customs at Pembina, N. Dak., from Canadian vessels entering and clearing that port after the passage of the act of March 3, 1897 (29 Stat. 689), abolishing such charges, is governed by section 26 of the act of June 26, 1884 (23 Stat. 59). 25 Op. 376.

#### *g. Merchant Marine.*

**33. Encouragement of.**—Section 14 of the act of June 26, 1884 (23 Stat. 57), "to remove certain burdens on the American merchant marine and to encourage the American carrying trade," etc., considered in connection with the eighth article of the treaty of 1827 with Sweden and Norway. 18 Op. 382.

**34. Same.**—No warrant is found in the treaty for the claim that the shipping of that power is entitled to the benefits of the act without submitting to its conditions. *Ib.*

#### *h. Title.*

**35. The Spanish vessels wrecked in battle by the naval vessels of the United States during the war with Spain, and now lying along the coast of Cuba, are the property of the United States.** 23 Op. 76.

**36. Same.**—That island being now temporarily within the jurisdiction of the United States, the Secretary of the Treasury, under section 3755, Revised Statutes, has power to make such provision for the sale or other disposition of such wrecked vessels as he may deem necessary. *Ib.*

**37. Same.**—Section 3755 applies as well to wrecks which are the property of the United

States as to the vessels of private owners which have been wrecked, abandoned, or become derelict. *Ib.*

VESSELS DISABLED IN A FOREIGN PORT. *See* DIPLOMATIC AND CONSULAR OFFICERS, 15-18.

#### **II. Officers.**

**38. Officers of American vessels.**—An alien seaman, though he has declared his intention to become a citizen of the United States, and has served three years on vessels of the United States, is ineligible to the position of an officer of an American vessel. For that full citizenship is required (sec. 2174 Rev. Stat.). 17 Op. 534.

**39. Class of aliens who, under peculiar circumstances, might be officers of United States vessels for brief periods.**—The act of June 26, 1884 (23 Stat. 33), amending section 4131, Revised Statutes, was obviously designed to make provision for a class of persons, who, though aliens, might be officers of United States vessels under peculiar circumstances and for brief periods. The provisions of that act are not in conflict or inconsistent with the act of April 17, 1874 (18 Stat. 30), entitled "An act to authorize the employment of certain aliens as engineers and pilots." Both statutes are therefore to be regarded as in force. 21 Op. 166.

**40. Masters of foreign vessels—Right to shackle alien passenger in port of United States.**—The master of a foreign vessel has a right, under the laws of the United States, to put in irons an alien on board his ship who is not allowed by law to enter the United States, in order to prevent such person from unlawfully landing; but this may be done only in exceptional cases and where nothing less will prevent the landing of such person. 24 Op. 531.

**41. Same.**—By the comity of nations, masters are permitted to exercise the same power, practically, in port as at sea, so far as matters within their vessels, and not disturbing the peace of the port, are concerned. *Ib.*

**42. Same.**—Whether such officer should put irons upon an alien immigrant is a question of care and good faith. He must, in good faith, be careful to prevent the landing; but

when he has exercised reasonable care to that end, he neither must nor may do more. *Ib.*

43. *Same.*—What is care or negligence is a question which varies with the particular cases; it does not depend upon the master's discretion, but may be brought by the alien to the determination of the courts. *Ib.*

ABANDONMENT. See ARENAS KEY ISLAND.

### III. Taxes, Penalties, Fees, etc.

#### a. *Penal Taxes, Fines.*

44. *Trading without license.*—A foreign vessel, i. e., one belonging wholly or in part to a subject of a foreign power, is not liable to the penal tax prescribed in section 4371, Revised Statutes. This tax applies exclusively to vessels belonging to citizens of the United States which are capable of being, and should be, enrolled and licensed. 17 Op. 388.

45. *Foreign vessels transporting passengers between ports in the United States.*—Under section 8 of the act of June 19, 1886 (24 Stat. 81), a foreign vessel is liable to a fine of \$2 for every passenger transported by it from one port in the United States to another port in the United States, though the continuity of the voyage may have been broken by the vessel touching at an intermediate foreign port. 18 Op. 445.

46. *Carrying passengers other than cabin passengers.*—Masters of vessels become liable to a fine of \$5 for each passenger, other than a cabin passenger, carried in violation of section 2 of the act of August 2, 1882 (22 Stat. 189), which provides that there shall not be in any compartment or space on a vessel occupied by "such passengers" (immigrant passengers) more than two tiers of berths, nor more than one person in a berth not double. 22 Op. 499.

47. *Same.*—The phrase "such passengers" in the concluding portion of section 2 of the act refers to steerage passengers. *Ib.*

48. *Trading without license.*—Vessels used exclusively for pleasure, and not carrying freight or passengers for pay, are not liable to the penalty prescribed in section 4371, Revised Statutes, for trading without a license. 18 Op. 564.

#### b. *Tonnage Taxes.*

49. *Tax where any officer of a vessel is not a citizen of the United States.*—The "tax of 50

cents per ton" imposed by section 4219, Revised Statutes, as amended by the act of February 27, 1877 (19 Op. 250), "upon any vessel any officer of which shall not be a citizen of the United States" is not a penalty capable of being remitted by the Secretary of the Treasury under sections 5292 and 5293, Revised Statutes. 17 Op. 120.

50. *Same.*—Vessels used exclusively for pleasure, and not carrying freight or passengers for pay, are not, when navigating waters of the United States between district and district, or between different places in the same district, subject to the tonnage duties prescribed by section 4219, Revised Statutes. 18 Op. 564.

51. *Same.*—A tax imposed under section 4219, Revised Statutes, on a vessel employing an alien as mate should not be remitted because such alien had duly declared his intention of becoming a citizen of the United States and had for more than three years continuously served on board American merchant vessels, but has never actually been admitted to citizenship. 21 Op. 412.

52. *Suspension.*—The President.—Section 14 of the act of June 26, 1884 (23 Stat. 57), does not subject to the discretion of the President the suspension of collection of portions of tonnage tax mentioned in the first proviso of that section. 18 Op. 53.

53. *Same.*—The right to such suspensions arises upon the happening of the condition therein mentioned, i. e., the state of foreign law which in the opinion of the legislature warrants such suspensions. *Ib.*

54. *Same.*—The phrase "government of the foreign country" in section 14 refers to the special government of such "country," as distinguished from that of the empire or other ultimate sovereignty of which it may be a member. *Ib.*

55. *Same.*—The question in each case of suspension is as to the tonnage and light-house dues exacted by the government at the particular port from which the vessel arrives, irrespective of those exacted at other ports of the same "country." *Ib.*

56. *The right to a reduction of tonnage duty under the first proviso of section 14 of the act of June 26, 1884 (23 Stat. 57), takes effect from the proclamation of the President, and not before.* 18 Op. 197.

57. **Same.**—By virtue of the third section of the act of July 5, 1884 (23 Stat. 119), the decision of the Commissioner of Navigation on questions involving a refund of the tonnage tax is final. That section supersedes or repeals the previous law vesting the Secretary of the Treasury with appellate power in such cases. *Ib.*

58. **Same.**—Section 26 of the act of June 26, 1884 (23 Stat. 59), authorizing the Secretary of the Treasury to refund, in certain cases, "any fine, penalty, forfeiture, exaction, or charge arising under the laws relating to vessels or seamen" has no application to tonnage duties. The words "exaction and charge" in this section, which might in some circumstances be held to comprehend tonnage duties, must, from their association with the terms "fine, penalty, forfeiture," be taken in an acceptation akin to that of these latter words. *Ib.*

59. The discrimination as to tonnage duty in favor of vessels sailing from the regions mentioned in the act of June 26, 1884 (23 Stat. 57), and entered in our ports is purely geographical in character, inuring to the advantage of any vessel of any power that may choose to transport between this country and any port embraced by the fourteenth section of that act. 18 Op. 260.

60. A vessel entered in a port of the United States from Bremen, via Southampton, is exempted under the proclamation of the President, made on the 26th of January, 1888, in pursuance of the first *proviso* in section 11 of the act of June 19, 1886 (24 Stat. 81), from payment of the tonnage tax imposed by said section, although the vessel may have taken on board cargo, passengers, and mails at the last-mentioned port. But if the vessel had entered at and cleared from Southampton it is liable to the duty. 19 Op. 128.

61. The Secretary of the Treasury is authorized, under section 26 of the shipping act of June 26, 1884 (23 Stat. 59), to repay the tonnage tax imposed on the steamer *Cuba* if, on investigation, he finds that it was "illegally, improperly, or excessively imposed" and if the Commissioner of Navigation shall have first decided, under section 3 of the act of July 5, 1884 (23 Stat. 119), that such tax was erroneously or illegally exacted. 19 Op. 660.

62. Tonnage tax is a charge upon the vessel itself and is expressly excepted from the

operation of the customs-revenue act of June 10, 1890 (26 Stat. 131), by section 14 thereof. Section 21 relates to a rule of evidence only. *Ib.*

63. **Same.**—Although section 29 of the act of 1890 (26 Stat. 131) repeals sections 2931, 2932, 3012½, and 3013, Revised Statutes, said act makes no provision for the repayment of a tonnage tax illegally exacted. *Ib.*

64. The President has no authority to reverse the decision of the Commissioner of Navigation so as to adjust the claims of Sweden and Norway for the return of tonnage dues alleged to have been erroneously exacted. Any application for relief should be addressed to the legislative branch of the Government. 20 Op. 367.

65. **Same.**—The decision of the Commissioner of Navigation is final on all questions of interpretation relating to the collection of tonnage taxes and the refund thereof. *Ib.*

66. Vessels from Hawaiian ports are still, notwithstanding the annexation of those islands to the United States, vessels from foreign ports within the meaning of the tonnage-tax law. 22 Op. 150.

67. The tonnage tax collected in Porto Rico under section 14 of the act of June 26, 1884 (23 Stat. 57), as amended by section 11 of the act of June 19, 1886 (24 Stat. 81), should be so deposited as to be available for the maintenance in part of the Marine-Hospital Service. 24 Op. 122.

68. Tonnage tax on foreign cable ship.—A British cable construction steamship engaged in its legitimate business, arriving at Honolulu from a foreign port, is not a vessel engaged in trade within the meaning of section 11 of the act of June 19, 1886 (24 Stat. 81), and therefore is not subject to the tonnage tax provided for in that section. 24 Op. 597.

69. Tonnage tax—Light-money tax.—Through inadvertence no "light-money" tax was demanded of the *Tarantula*, a foreign-built American-owned steam yacht on her arrival in this country at Newport News, Va., but the tax was assessed and collected at her next port, New York, where the master presented a bill of sale to an American owner, acknowledged before the United States consul at London: *Held* that since the *Tarantula* was not a vessel of the United States, and, on entering the port of Newport News, did not carry "a sea letter or other regular

document issued from a custom-house of the United States proving the vessel to be American property," as provided by section 4226, Revised Statutes, she therefore became liable to the "light-money" tax of 50 cents per ton imposed by section 4225, Revised Statutes. 25 Op. 75.

**70. Tonnage tax—Vessels from Guantanamo naval station.**—A vessel coming to the United States from the United States naval station at Guantanamo, Cuba, with freight therefrom or in ballast is not subject to the tonnage tax imposed by section 11 of the act of June 19, 1886 (24 Stat. 81). 25 Op. 157.

**71. Same.**—A vessel, however, which loads at a foreign port and merely touches at the naval station en route is subject to the tonnage tax. *Ib.*

#### c. Head Tax.

**72. The Secretary of the Treasury is authorized,** under section 26 of the shipping act of June 26, 1884 (23 Stat. 59), to refund the head tax levied in the case of the steamship *Russia* under the provisions of the act of August 3, 1882 (22 Stat. 214), or so much thereof as he may think proper, if, upon investigation, he finds that the same was illegally, improperly, or excessively imposed. 19 Op. 660.

**73. Same.**—As sections 2932 and 3013 of the Revised Statutes were repealed before the date of the exaction under consideration, it does not appear that any power to refund the money illegally exacted exists, except under section 26 of the act of June 26, 1884 (23 Stat. 59). *Ib.*

**74. Same.**—Assuming that the money was illegally levied and is unlawfully withheld from the rightful owner, a construction that will do justice may properly be adopted if it can be done in accordance with existing statutes. *Ib.*

**75. Same.**—Head tax is not subject to the customs-revenue act of June 10, 1890 (26 Stat. 131), any further than it may be affected by the repeals contained in section 29 thereof. Neither section 14 nor section 24 covers or includes this tax. *Ib.*

**76. Same.**—Head tax is a lien upon the vessel as well as a debt against the owner thereof, and has no relation to the collection of customs duties. *Ib.*

*See also* IMMIGRATION.

#### d. Refund.

**77. Moneys improperly exacted from and paid by vessels proceeding under section 29 of the act of June 26, 1884 (23 Stat. 59), to unlade at places other than a port of entry,** may be refunded by the Secretary of the Treasury, without formal protest by the applicant, in cases where application has been made within one year from such payment. 19 Op. 646.

**OF TONNAGE TAXES.** *See* 61–65.

**OF HEAD TAX.** *See* 72–74.

**OF ENTRANCE AND CLEARANCE FEES.** *See* 80.  
**REMISSION OF FINES, PENALTIES, AND FORFEITURES.** *See* TREASURY DEPARTMENT, 40–43.

#### e. Fees.

**78. Foreign-built American-owned vessels—Fees of consular officers.**—Foreign-built vessels owned by citizens of the United States are not within the provisions of the act of June 26, 1884 (23 Stat. 53), forbidding the collection of fees by consular officers from American vessels. 18 Op. 234.

**79. Same.**—Foreign-built vessels owned by citizens of the United States are not exempted by the act of June 26, 1884 (23 Stat. 53), from the payment of fees for services of consuls. 18 Op. 111.

**80. Refund of entrance and clearance fees—Canadian vessels.**—The right to a refund of entrance and clearance fees improperly exacted by the collector of customs at Pembina, N. Dak., from Canadian vessels entering and clearing that port after the passage of the act of March 3, 1897 (29 Stat. 689), abolishing such charges, is governed by section 26 of the act of June 26, 1884 (23 Stat. 59). 25 Op. 376.

*See also* COAST AND GEODETIC SURVEY; IMMIGRATION, VI.

### SHIPPING ACT.

(Of June 26, 1884; 23 Stat. 53.)

**REFUND OF FINE.** *See* FINES, PENALTIES, AND FORFEITURES, 6.

**PAYMENT OF ADVANCE WAGES TO SEAMEN.**  
*See* SEAMEN, 3–5.

**SHIPPING ARTICLES.**

*See* SEAMEN, 6.

**SHIPPING COMMISSIONERS.**

1. **Shipment of seamen.**—A shipping commissioner has no authority to ship seamen on "sail or steam vessels engaged in the coastwise trade," unless such vessels come within the exceptions of the act of June 9, 1874 (18 Stat. 64); nor will the consent of the master and seaman operate to give such authority. 18 Op. 54.

2. **Fees.**—While he should not receive fees for shipping seamen on coasting vessels not within said exceptions, yet he could not be prosecuted under the act of June 7, 1872 (17 Stat. 262), for so doing. *Ib.*

3. **Same.**—Should such fees be received by him, they would not have to be accounted for to the Secretary of the Treasury under section 27 of the act of June 26, 1884 (23 Stat. 59). *Ib.*

4. **The shipping commissioners, act of June 7, 1872** (17 Stat. 262), now embraced by Title 53, Merchant Seamen, Revised Statutes, has no application to seamen employed on vessels engaged in the service of the Coast and Geodetic Survey. 19 Op. 182.

5. **Offices for.**—The duty of assigning suitable offices and rooms in public buildings for the use of United States shipping commissioners, imposed upon the Secretary of the Treasury by the act of March 3, 1897 (29 Stat. 687), was not affected by the act of February 14, 1903 (32 Stat. 825), establishing the Department of Commerce and Labor. 25 Op. 117.

**SHOSHONE INDIAN LANDS.**

*See* INDIANS, 84-87.

**SIGNAL SERVICE.**

*See* ARMY, IV.

**SIGNATURE.**

OF THE ASSISTANT SECRETARY OR ACTING HEAD OF A DEPARTMENT. *See* DEPARTMENT OF THE INTERIOR, 21-22.

OF THE PRESIDENT. *See* PRESIDENT, 98.

**SILVER-BULLION ACT.**

(*Act of July 14, 1890; 26 Stat. 289.*)

*See* TREASURY DEPARTMENT, V.

**SILVER CERTIFICATES.**

*See* TREASURY DEPARTMENT, V.

**SILVER ORE.**

*See* CUSTOMS LAW, 242.

**SINKING FUNDS.**

*See* RAILROADS, 30-34.

**SIoux MIXED-BLOOD INDIANS.**

*See* INDIANS, I, b.

**SIoux RESERVATION.**

*See* INDIANS, 36-38.

**SITES.**

FOR PUBLIC BUILDINGS. *See* PUBLIC BUILDINGS.

FOR FORT BRADY. *See* RESERVATIONS AND PARKS, 6.

**SJOLI v. DRESCHER.**

(199 U. S., 564.)

*See* RAILROADS, 63.

**SLAUGHTER OF INFECTED ANIMALS.**

*See* HEALTH AND QUARANTINE, 15-17.

**SMUGGLING.**

*See* CUSTOMS LAW, 385, 386, 402-404, 418, 419, 429, 448.



**SOLDIERS.**

COMPENSATION—EXTRA DUTY. *See* ARMY, 24-25.

PREFERENCE IN CIVIL APPOINTMENTS. *See* CIVIL SERVICE, V.

**SOLDIERS' HOME.**

1. The Soldiers' Home is not entitled to bounty land warrants belonging to the estates of deceased soldiers which remain unclaimed for the period of three years after their decease. 17 Op. 157.

2. Board of Commissioners of the Soldiers' Home—Approval of recommendations of.—The Secretary of War is vested with a discretionary power to approve or disapprove recommendations made by the Board of Commissioners of the Soldiers' Home under section 4816, Revised Statutes. 17 Op. 449.

3. The Board of Commissioners of the Soldiers' Home can not delegate to the governor of the Home discretionary police authority for the preservation of good order within its limits. 20 Op. 514.

4. Same.—Nor can it empower the governor to arrest, detain, and deliver over to the civil authorities non-military persons committing crimes less than capital within the limits of the Home, except in the cases where any person may make an arrest without warrant or precept. *Ib.*

5. Same.—The Board can, however, by regulation duly made invest him with authority to expel from the grounds persons not inmates of the Home offending against good order and decency. *Ib.*

6. A person duly designated to take charge of the office of Judge-Advocate-General and to perform its duties pending the suspension from duty of the Judge-Advocate-General, is qualified under section 10 of the act of March 3, 1883 (22 Stat. 565), to act as one of the Board of Commissioners of the Soldiers' Home in the District of Columbia. 20 Op. 483.

7. Who may perform duties of member of the Board during his absence.—When the place of any chief of bureau named in section 10 of the act of March 3, 1883 (22 Stat. 565), has been temporarily filled under section 178, Revised Statutes, the person so temporarily acting may perform the duties of such officer

as a member of the Board of Commissioners of the Soldiers' Home, just as he performs the other duties of the officer in whose stead he is acting. 23 Op. 473.

8. The Board of Commissioners of the Soldiers' Home are authorized to permit the governor, deputy governor, and treasurer, who are retired officers of the Army and reside at the Home and have its affairs in charge, to make use of ordinary supplies of fuel, light, forage, milk, ice, or vegetables, produced at and obtained for use at the Home, provided they are not excessive in amount or value. 20 Op. 350.

9. Same.—The articles in question are not pay or emoluments received from the Government, but merely an indirect application of a small fraction of the trust funds to the benefit of *cestuis que trust*. *Ib.*

10. Same.—The practice, acquiescence, and Congressional approval have established the construction of law which permit the allowances in question. *Ib.*

11. The Board is not prohibited from paying the treasurer, out of the funds of the Home, a reasonable salary for his services. Such compensation is not pay or emoluments received from the Government. *Ib.*

12. Free withdrawal of spirituous liquors from bond.—Spirits purchased for the National Soldiers' Home at Washington, D. C., are purchased "for the use of the United States" within the meaning of section 3464, Revised Statutes, and may be withdrawn from bonded warehouses without payment of internal-revenue tax. 25 Op. 449.

13. Contract stipulations with regard to the erection of certain buildings—Penalty—Liquidated damages.—Two parties entered into contracts with the proper authorities for the erection of certain buildings at the Soldiers' Home. The contracts provided that in case of failure to complete the work within the times specified a deduction or payment of \$25 "per diem" should be made as liquidated damages for each and every day thereafter until completion of the contracts. With nothing to show the cause of the delay, whether a trifling or a substantial portion of the work was delayed, or whether any real damage was caused thereby, *Held*: That the question whether contract stipulations for the payment or deduction of a certain sum "per diem" for failure to perform at a specified

time is to be treated as a penalty or as liquidated damages, must frequently depend upon facts and circumstances outside of the contract. No matter in how strong terms the contract provides that the stipulation is to be considered as liquidated damages it is not at all conclusive of the matter. 23 Op. 105.

14. **Same—General principles—Compensation—Penalties.**—In determining this question courts proceed upon the single idea of compensation, and, where this can be done without injury to the party not in default, will treat such provisions as penalties. *Ib.*

15. **Same—Liquidated damages.**—Where it is impossible to determine the extent of the damage, courts will generally give effect to the agreement, and treat it as liquidated damages. Even here the idea of compensation must not be violated by fixing a sum greatly in excess of any actual or fairly presumable damage. *Ib.*

16. **Same.**—Whether the stipulation is to be treated as a penalty or as liquidated damages, the sum to be deducted or recovered is such as will compensate the party for the loss occasioned. *Ib.*

17. **Same—Secretary of War—Board of Commissioners of the Soldiers' Home.**—If, under the general principles stated and the facts of the case, the Secretary of War shall find that the sum to be deducted is measured by the damages really sustained, the Board of Commissioners of the Soldiers' Home have ample authority to pay said contractors the full contract prices, less damages actually sustained by the delay. *Ib.*

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#### SOLICITOR OF THE TREASURY.

CONNECTION WITH THE DEPARTMENT OF JUSTICE. *See* DEPARTMENT OF JUSTICE, II.

DUTIES CONNECTED WITH THE TREASURY DEPARTMENT. *See* TREASURY DEPARTMENT, 143-145.

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#### SOUTH BOSTON IRON WORKS.

Upon the statement of facts submitted: *Advised* that the right of the South Boston Iron Works to the possession and use of certain property (two lathes and a crane) be-

longing to the United States, derived under an agreement with the latter, dated January 21, 1885, has terminated, and that the right to the possession of the property is now in the United States exclusively. 19 Op. 73.

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#### SOUTH CAROLINA.

1. Certain arms originally loaned the Washington Light Infantry of Charleston, S. C., and afterwards charged to the State of South Carolina on its quota are held by that State for the use of the whole body of its militia in such manner and in accordance with such rules and regulations as the authorities of the State may prescribe. 21 Op. 54.

2. The dispensary law of South Carolina of 1893 is ineffective and inoperative as against distilled liquors held in a United States bonded warehouse under the control of the collector of internal revenue. 21 Op. 73.

3. **Same.**—That law does not authorize any officer of that State to tender the taxes due to the United States on such liquors. *Ib.*

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#### SOUTH DAKOTA.

UNIVERSITY LAND GRANTS. *See* PUBLIC LANDS, VI.

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#### SOUTH PASS.

OF THE MISSISSIPPI RIVER. *See* NAVIGABLE WATERS, 66-70, b.

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#### SOUTHERN PACIFIC RAILROAD.

LAND GRANT. *See* RAILROADS, 62.

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#### SPANISH CLAIMS.

*See* CLAIMS, 76-78.

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#### SPANISH CONCESSIONS.

*See* CONCESSIONS.

**SPANISH LAWS.**

1. The laws of Spain concerning industrial property were contemplated by the framers of article 13 of the treaty with Spain (30 Stat. 1760) in providing protection for Spanish rights. 22 Op. 617.

2. The laws of Spain concerning industrial property explained. *Ib.*

*See also* CUBA; PORTO RICO; PHILIPPINE ISLANDS.

**SPANISH PRISONERS.**

*See* PRISONS AND PRISONERS.

**SPANISH TREATY CLAIMS COMMISSION.**

1. Right to call for certified copies of records instead of originals.—Section 8 of the act of March 2, 1901 (31 Stat. 879), which provides that all reports, records, or other documents now on file or of record in the Department of State, or in any other Department, or certified copies thereof, relating to any claims prosecuted before the Spanish Treaty Claims Commission, shall be furnished to the Commission upon its order, vests in the head of that Department a discretion to send either the original papers or certified copies thereof, upon a request of the Commission for certified copies of such papers. 23 Op. 470.

2. *Same.*—That section does not confer upon the Commission an option to demand certified copies of such papers or records instead of the originals. *Ib.*

**SPANISH WAR VESSELS.**

WRECKED IN BATTLE OFF THE COAST OF CUBA, DISPOSITION OF. *See* TREASURY DEPARTMENT, 70; VESSELS, 6-8.

**SPECIAL AGENTS.**

OF THE CENSUS OFFICE. *See* DEPARTMENT OF COMMERCE AND LABOR, 29, 30, 34.

OF THE TREASURY. *See* TREASURY DEPARTMENT, 18.

**SPECIAL DEPUTY MARSHALS.**

*See* ELECTIONS.

**SPECIAL DISBURSING AGENT.**

*See* PUBLIC BUILDINGS, 26-37.

**SPECIAL EXAMINERS.**

*See* DEPARTMENT OF THE INTERIOR, 32, 33, 35.

**SPECIFIC PERFORMANCE.**

*See* CONTRACTS, 131; CUBA, 33.

**SPEED PREMIUMS**

*See* PREMIUMS.

**STAFF BUREAU CHIEFS.**

*See* NAVY, 96, 97.

**STAMP TAX.**

*See* INTERNAL REVENUE, II, f.

**STATE DEPARTMENT.**

*See* DEPARTMENT OF STATE.

**STATE OFFICE**

*See* OFFICE AND OFFICERS, 75.

**STATE POWDER OFFICER**

AT NORFOLK, VA.—JURISDICTION. *See* UNITED STATES, 5.

## STATE PROCESS.

*See* COURTS, 32; PUBLIC BUILDINGS, 40; UNITED STATES, 69-78.

## STATE TAX.

1. Where a State imposed a tax upon the registration of deeds, and a deed to the United States conveying land within such State was put on record by an agent of the Government: *Advised* that; there being no provision in the State law exempting the registration of deeds to the United States from the tax, the Government is properly chargeable therewith, and that it should be paid. 18 Op. 491.

2. The tax referred to is not, strictly speaking, a tax upon either the instrumentalities, agencies, or property of the United States. *Ib.*

3. Toll on Government property—State harbor commissioners of California.—The State harbor commissioners of California are charged by the laws of that State with the supervision and control of the wharves and landings of the harbor of San Francisco, with the right to collect dockage, wharfage, rent, or toll. 23 Op. 299.

4. Wharfage charges on property of the United States.—The imposition of a toll or charge by such commissioners on merchandise, the property of the United States passing to or over the wharves at San Francisco is constitutional and valid; the charge being for a service rendered, the Government is not entitled to such service free of toll. *Ib.*

5. Southern Pacific Company's charge for State toll.—The same rule would apply to the charge of the Southern Pacific Company, called a "State toll," if this charge was in fact an authorized charge for the use of any part of the State's terminal system, including the transfer railroad along the water front to the wharves. *Ib.*

6. Such a toll or charge is not a tax upon or in respect of interstate traffic, nor a tax upon the instrumentalities and agencies of the General Government, within the prohibitions of the Constitution, but is a charge for the use of property and facilities furnished the Government by the State of California. *Ib.*

## STATE, WAR AND NAVY BUILDING.

1. Appointment of superintendent—Former officer of the Engineer Corps.—The transfer of the Engineer Corps (steam) of the Navy to the line by the navy personnel act of March 3, 1899 (30 Stat. 1004), does not preclude the appointment of a naval officer on the active list, formerly an officer of that corps and now restricted to the performance of engineer duty, to the superintendency of the State, War, and Navy building as provided in the act of March 3, 1883 (22 Stat. 553). 25 Op. 508.

2. Same.—The act of March 3, 1883, does not authorize the detail as superintendent of the State, War, and Navy building of a retired officer of the Navy, transferred from the Engineer Corps to the line for engineer duty only, by the navy personnel act of March 3, 1899. *Ib.*

3. Same.—The act of March 3, 1883, does not contemplate that an officer of the Corps of Civil Engineers of the Navy shall be eligible for appointment as superintendent of the State, War, and Navy building. *Ib.*

DISBURSEMENT OF APPROPRIATIONS FOR. *See* PUBLIC BUILDINGS, 32-33.

## STATES.

1. The invasion of the State of Vermont in 1864 considered historically, and concluded to have been an attack on the United States by the Confederates. 20 Op. 134.

2. The State of Rhode Island is not a person, corporation, or association within the meaning of sections 4 and 5 of the river and harbor act of 1890 (26 Stat. 453). 20 Op. 606.

TAX LIENS UPON PROPERTY ACQUIRED BY CONDEMNATION AND CEDED TO THE UNITED STATES. *See* UNITED STATES, V, 75.

STATE BANK CIRCULATION. *See* BANKS, III.  
STATE BOARD OF HARBOR COMMISSIONERS. *See* UNITED STATES, 22.

STATE BONDS. *See* UNITED STATES, VIII.  
CESSIONS OF JURISDICTION. *See* UNITED STATES, V; PUBLIC BUILDINGS, 38-40.

STATE COURTS. *See* COURTS, III.

STATE MILITIA. *See* ARMY, III.

**POWER OVER NAVIGABLE WATERS.** *See* NAVIGABLE WATERS, I, b.

*See also* the several States under their respective titles.

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#### STATUTES INTERPRETED.

*See* p. 531, TABLE OF STATUTES CONSTRUED, CITED, OR REFERRED TO.

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#### STATUTES OF LIMITATIONS.

1. Statutes of limitations apply to the legal remedies and not to the rights of parties. 21 Op. 564.

2. The proviso of the appropriation act of March 3, 1873 (17 Stat. 500), bars claims for horses lost in the Indian war of 1855-56 and not presented until the year 1890. 20 Op. 152.

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#### STATEN ISLAND RAPID TRANSIT RAILROAD.

*See* RESERVATIONS AND PARKS, 44.

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#### STATUTORY CONSTRUCTION.

1. **Appropriations.**—A statute should not be construed as making an appropriation, or authorizing the expenditure of money, unless the language is sufficiently explicit to clearly justify it; authority for the use of the public money can not arise by inference without very clear terms requiring it. 18 Op. 176.

2. **Appropriation.**—Where an act of Congress, in making appropriation for the payment of a claim, incorrectly stated an initial letter in the name of the claimant: *Advised* that the claim may be paid provided its identity with that provided for in the act be clearly established. 18 Op. 50.

3. **Act amending an earlier act.**—The express object of a later act being to amend an earlier act, a feature of the earlier act which was omitted from the later act was necessarily repealed. 21 Op. 253.

4. **Addition to language of a statute.**—No mere omission or failure to provide for contingencies, for which it might have been wise to provide specifically, justifies any judicial or executive addition to the language of a statute. 22 Op. 405.

5. **Approval.**—A law speaks from the date of its approval or from the future date fixed to take effect, except so far as it is in terms retrospective. 23 Op. 371.

6. **Appointment.**—When a general law prescribes what persons may be appointed to any class or kind of office or place, the time or manner of their appointment, the tenure of their office, their qualifications, or the test of their qualifications and fitness, any appointment of the kind thereafter authorized must, unless otherwise provided, be made with reference to and in conformity with the requirements of such general law. 25 Op. 341.

7. **Context.**—In the construing of a doubtful passage in a statute resort may be had to the immediate context and the legislation in *pari materia*. 21 Op. 124.

8. **Light of circumstances under which an act was passed.**—In construing a statute the language of the act may always be considered in the light of the circumstances under which it was passed. 19 Op. 491, 494.

9. **Same.**—Statutes, like other writings containing language admitting of doubt, should be read in the light of the circumstances under which they were made. 20 Op. 183.

10. **Departmental construction—Tariff act.**—Where a clear preponderance of evidence can not be adduced as to the meaning of an expression in a tariff act departmental construction tacitly approved by Congressional recognition should turn the scale and be accepted as sufficient evidence of the legislative intent. 18 Op. 533.

11. **Departmental practice.**—Contemporaneous construction given by an Executive Department, and continued through different administrations, though inconsistent with the literalism of an act, should be considered as decisive (142 U. S. 621). 20 Op. 406.

12. **When the meaning of a statute is clear** it can not be affected by departmental practice. 20 Op. 592.

13. **Departmental practice.**—In case of ambiguity in a statute, departmental practice may affect its construction when long-

continued, uniform, and familiar, but not when merely recent and occasional. 20 Op. 746.

14. When an act of Congress has received for ten years a uniform departmental construction, which was known to Congress, and a subsequent act in *pari materia* is enacted, without change of language, there is a presumption of considerable force that the new language is intended to receive the same construction as the old. 21 Op. 338.

15. Uniform departmental practice should receive great, if not controlling, weight in statutory construction, especially where the statutory language was not modified when incorporated in the Revised Statutes. 21 Op. 349.

16. When departmental practice is not uniform it affords no guide to the construction of the law. 21 Op. 363.

17. If a statute is ambiguous, a long-established construction thereof by the Department charged with its execution, if continuous and consistent, will be regarded as conclusive. 21 Op. 408.

18. Departmental practice clearly defeating the obvious purpose of a statute which is not ambiguous should not govern in its interpretation. 21 Op. 410.

19. Same.—The weight to be given departmental practice is greatly increased when Congress, in reenacting the law, fails to indicate in any way its disapproval of the settled construction to which it is thus regarded as giving an implied approval. *Ib.*

20. If there be any ambiguity in a statute, a uniform departmental practice for a number of years should be regarded as having settled the law. 21 Op. 413.

21. Where the construction of an act is doubtful it is proper to resort to the construction which has been placed upon it by the Department charged with its execution. 22 Op. 167.

22. The regulation of a Department of the Government is not to control the construction of an act of Congress when its meaning is plain; but when there has been a long acquiescence in a regulation, and by it rights of parties for many years have been determined and adjusted, it is not to be disregarded without the most cogent and persuasive reasons (*Robertson v. Downing*, 127 U. S., 607, 613). *Ib.*

23. Great weight should be given to a long and consistent construction given by an Executive Department to a statute which it was its province to administer. 25 Op. 537.

24. The construction of a statute in departmental practice is entitled to great weight in its interpretation if that construction is fairly settled and uniform. 25 Op. 585.

25. The designation of one class of individuals as forbidden to do a certain thing raises a just inference that all other classes not mentioned are not forbidden. 22 Op. 426.

26. Date.—The general rule is that laws speak from the date of their enactment, and where something remains to be done not inconsistent with a relation back when it is done the general rule may be applied. 25 Op. 299.

27. Absurd conclusions.—A statute must not be construed so as to lead to an absurd conclusion. 20 Op. 89.

28. A construction which would make the results of a law unreasonable should be avoided. 20 Op. 660.

29. Although a statute may have apparently unreasonable and extraordinary results, yet when there is no ambiguity there is no room for construction in order to avoid those results. 20 Op. 735.

30. Effect upon public welfare.—In measuring the legislative intent as to the scope to be given to a statute in its operation upon previous statutes not specifically referred to, a consideration of the effect upon the public welfare must necessarily be taken in view (3 Op. 438; 2 Op. 260, cited). 21 Op. 181.

31. A practical effect of the law which would be undesirable can not be allowed to overcome its express terms. 17 Op. 36.

32. The actual intention of the framers or parties to a written document is generally to be determined by the meaning of the language used to express it. 22 Op. 363.

33. Where language is doubtful, and it is fairly susceptible of different meanings, the consequence of a particular construction may be considered in determining which construction should be adopted, yet, where the language is plain, and when read in the light of existing facts and the object intended to be attained it fairly admits of but one meaning, the consequences must be serious to warrant a departure from such plain meaning. *Ib.*

**34. Construed in conformity with existing law.**—In every statute authorizing or requiring a certain act there is implied, as if there written, the direction that such act shall be done with reference to, and in conformity with, existing laws on the subject. 25 Op. 341.

**35. What is expressed in a statute is exclusive** when it is creative of some right, power, or grant. 24 Op. 621.

**36. Facts known to Congress.**—In construing an act it is proper to consider facts which have been known to Congress and to assume that it legislated having them in view. 21 Op. 372.

**37. General words may be restrained** so as to apply only to the subject within the purview of the act, though literally they would embrace a much larger class. 22 Op. 556.

**38. A mistaken opinion of the legislature concerning the law** does not make the law. 20 Op. 530.

**39. The later expression of the lawgivers** will replace preceding law if inconsistent or repugnant even if there is not an express repeal. 23 Op. 545.

**40. Lottery.**—Any enterprise or scheme by which a person pays for a chance to obtain something of much greater value, the getting or failure to get which depends upon lot or chance, is similar to a lottery in the sense in which that word is used in the statute. 23 Op. 200.

**41. Legislative contracts or grants** are to be construed strictly against the grantees, and nothing passes but what is conveyed in clear and explicit language. 19 Op. 117.

**42. The donee of a statutory power** can only make a valid execution of such power by a strict compliance with the statutory grant. 19 Op. 432.

**43. What is implied in a statute** is just as much a part of it as if expressed. 23 Op. 445.

**44. Implied authority.**—Where rights of person and property are involved, an implied authority which is summary and might be used arbitrarily should not be lightly assumed. In such cases the inference should not only be persuasive but irresistible. 24 Op. 577.

**45. Intent.**—The words of every law are to be taken in subordination to its intent, and where they are general their sense will be restricted if necessary to prevent an unjust

and absurd consequence which it must be presumed the legislature could not have contemplated. 18 Op. 149.

**46. The intent of the lawmaker** is the law. 18 Op. 594.

**47. Probable intention of individual Members of Congress.**—Where the language of an act of Congress is ambiguous, the probable intention of the individual Members of Congress would be sought as a guide to construction, but a clear omission from the statute can not be supplied upon any consideration of supposed oversight, inconsistency, or hardship. 21 Op. 416.

*See also* 21 Op. 291.

**48. History—Meaning.**—The parliamentary history of an act is inadmissible to explain its meaning. 22 Op. 426.

**49. Same.**—The meaning attached to an act by its framers or by the members of either House of Congress can not control its construction. *Ib.*

*See also* 121.

**50. While "may" in any statute** is ordinarily to be construed as "shall" or "must" when public rights or interests are concerned, yet the construction depends upon the context of the statute, the test being the intent of the legislature. 24 Op. 594.

**51. While the word "may" in a statute** is sometimes construed as imposing a duty rather than conferring a discretion, yet this rule of construction is by no means invariable. Its application depends on the context of the statute, and whether it is fairly to be presumed that it was the intention of the legislature to confer a discretionary power or to impose an imperative duty. 21 Op. 420.

**52. Language whose ordinary meaning** is permissive only is sometimes held to be mandatory when other parts of the law make it plain that it was intended to require and not merely authorize. 21 Op. 391.

**53. Where public rights or duties are involved, words which ordinarily impart merely permission or authority** are held to impose a duty or obligation. 19 Op. 325.

**54. Words of authorization in a statute** providing for the exchange of gold bars for gold coin held to be mandatory upon the officers of the coinage mints, etc. 19 Op. 575.

55. Whenever power is given to public officers, to be exercised for the public interest, the language used, though permissive in form, is mandatory. 21 Op. 167.

56. Whenever a power is given by statute, everything for the making of it effectual, or requisite to attain the end, is implied. 22 Op. 665.

57. Legislature presumed to know the meaning of words.—The intent of the lawmaker is to be found in the language that he has used. He is presumed to know the meaning of words and the rules of grammar. 22 Op. 353.

58. It is to be presumed that the legislature means precisely what it says, and the effort of the interpreter should be to give force and effect to every word, paragraph, and section of the act. 22 Op. 426.

59. The meaning or construction of a statute is that which the legislature intended, if that can be legitimately determined; and to this end not merely the provisions in question should be consulted, but also the whole act, and other acts in *pari materia*. 23 Op. 608.

60. A legislature is presumed to know decisions of the courts construing its language, so that if the tribunals have given a certain construction and the legislature in a new law uses the same or, practically the same language, without negating the construction adopted by the courts, it will be presumed that the legislature means what the courts have said. 25 Op. 308.

61. Duty to construe a statute in the sense in which it appears to have been used.—Nothing would seem to be better established in reason or authority than that when the expounder of a statute or other instrument is satisfied that a term occurring in it is not to be taken in its normal or technical acceptance, but in some other, it becomes his duty to give it the sense in which it appears to have been used. 18 Op. 146.

62. Where words are sometimes used in different senses, their meaning in a statute must always be construed in reference to the subject-matter of the enactment. 22 Op. 178.

63. The ordinary meaning of the language in an enactment must be presumed to be intended unless it would manifestly defeat the object of its provisions. 21 Op. 420.

64. Words having a well-defined meaning will be presumed to have been used by the

legislature to express that meaning and no other, unless a contrary intent is disclosed. 25 Op. 71.

65. No part of an act is to be regarded as meaningless or superfluous if a construction can be legitimately found which will preserve and make it effectual. 22 Op. 426.

66. The law looks at facts, not names. 20 Op. 660.

67. An act of Congress should not be treated as a nullity if it can by any reasonable construction be made operative. 21 Op. 372.

68. The new parts or the changed portions of an amended law, unless expressly applied, should not be held to diminish or injure vested rights under the earlier law. 23 Op. 371.

69. Prospective.—Statutes are to be construed prospectively unless the contrary intention is so clear as to admit of no other construction. 17 Op. 557.

70. Retrospective operations of words.—Words should not have a retrospective operation unless they are so clear, strong, and imperative that no other meaning can be annexed to them, or unless the intention of the legislature can not be otherwise satisfied. 21 Op. 411.

71. Previous statute.—When Congress adopts substantially the language of a previous statute, whether from the statute book of the United States or from that of any State, it is presumed to adopt therewith the judicial construction already placed upon the language of the act. 20 Op. 719.

72. Provisos do not always limit legislation with which connected.—While there is a general rule of construction to the effect that a proviso is to be construed as limiting legislation to the subject-matter with which it is immediately connected, this rule is by no means of universal application. 20 Op. 81.

73. Exceptions and provisos.—In construing the main provisions of a statute too great weight should not be put upon exceptions and provisos which may have been inserted from excess of caution. 21 Op. 255.

74. Savings and exceptions are often introduced in a statute from excessive caution. It would sometimes pervert the intentions of an author of a writing if every other thing of the same general tenor as that excepted should be regarded as embraced in the general words. 21 Op. 597.



75. Phrases are governed by and do not govern the text of a statute. 22 Op. 295.

76. Preamble.—In construing the act of August 15, 1876 (19 Stat. 206), the preamble thereto may be resorted to for the purpose of ascertaining the meaning of the enacting clause. 18 Op. 316.

77. Power to sell land includes power to make conveyance.—The power under section 6 of the act of March 3, 1881 (21 Stat. 467), to sell at auction certain land of the United States in the District of Columbia carries with it the authority to make a conveyance to the successful bidder. 17 Op. 100.

78. All parts of an act relating to the same subject should be considered together and not each by itself. 22 Op. 556.

79. A penal statute is to be construed strictly and its provisions can not be extended by construction, implication, or otherwise, beyond the plain meaning of its language. 22 Op. 475.

80. Statutes highly penal in their nature must be construed strictly, and should not be applied to the business of a citizen unless such business is certainly within their purview. 23 Op. 531.

81. Violations subjecting to penalty.—The violation of the provisions of a statute that subject a person to a penalty, whether a forfeiture or otherwise, must be something more than an accidental or unwitting violation. 22 Op. 390.

82. A clear omission from a statute can not be supplied upon any considerations of supposed oversight, inconsistency, or hardship. 21 Op. 291, 416.

83. No mere omission or failure to provide for contingencies, for which it might have been wise to provide specifically justifies any judicial or executive addition to the language of a statute. 22 Op. 405.

84. Where a repealing act expires of its own limitation, the act repealed is revived. 20 Op. 466.

85. Repeals by implication are not favored and are held to have taken place only when the provisions of the earlier and later statutes are irreconcilable and could not have been intended to be operative at the same time. 21 Op. 55, 181.

86. One statute should not be held to have been impliedly repealed by another, unless the inconsistency and antagonism between the

two is such that they can not stand together. 21 Op. 119.

87. The conclusion that a statute is repealed by implication is only to be reached when there is irreconcilable conflict and when the two statutes can not by reasonable construction stand together. 21 Op. 181.

88. Repeals by implication are permitted only in cases of absolute inconsistency. 21 Op. 227.

89. Irreconcilable conflict is necessary for an implied repeal of a statute, and the presumption is stronger against implied repeals where provisions supposed to conflict are in the same act or were passed at nearly the same time. 21 Op. 597.

90. Implied repeals of laws are not favored.—Where the true construction of later legislation is doubtful, the doubt should be resolved against any construction which revolutionizes existing systems of administration. 23 Op. 406.

91. A general act does not operate as a repeal of a prior special act when there is no necessary inconsistency in their standing together. 21 Op. 338.

*See also* '94.

92. Repeals by implication are never favored.—There must be a positive repugnancy between the old and the new law to work an implied repeal. If possible, the two laws should stand together. 24 Op. 561.

93. Repeals by implication are not favored, and when two statutes cover in whole or in part the same matter, and are not absolutely irreconcilable, effect should be given, if possible, to both (*U. S. v. Greathouse*, 166 U. S., 605). 25 Op. 112.

94. A general act is not to be construed to repeal a previous particular act, unless there is some express reference to the previous legislation on the subject, or unless there is a necessary inconsistency in the two acts standing together. 22 Op. 106.

95. A statute should receive a reasonable construction and one in consonance with its manifest object and intent. 21 Op. 546.

96. An act of Congress should receive a reasonable construction and be so enforced as to produce as little injury and inconvenience as may be consistent with its terms and object. 22 Op. 460.

97. No mere regulation can defeat a statute.—So far as in any reasonable way is practicable,

effect is to be given to the very words of an act; but no method that is impracticable will be supposed to have been intended. 18 Op. 1.

98. Statutes ordinarily make no change in rights already acquired.—The ordinary presumption applicable to every statute is that it lays down a rule of conduct for the future, but makes no change in rights already acquired or conditions already established. 21 Op. 21.

99. Revised Statutes—Reference to the original acts in interpreting.—Where the meaning of the Revised Statutes is obscure or ambiguous, reference may be had to the original acts to assist in determining the revision, but when the meaning is clear and free from doubt, no such reference is necessary or permissible. 20 Op. 634.

100. Reference to original act.—Where there is doubt as to the construction of a revised statute, reference may always be had to the original act. 21 Op. 190.

101. The more specific provisions should govern.—It is a general rule of statutory interpretation that in cases of apparent conflict the more specific provisions should govern, and this is especially the case when the specific provisions follow the general one. 21 Op. 405.

102. It must be regarded as a well-settled principle in interpreting statutes that, if possible, "no clause, sentence, or word shall be superfluous, void, or insignificant." 18 Op. 145.

103. Order of passage.—Where two acts are passed on the same day, the order of their passage is not important if they can be reconciled. 21 Op. 597.

104. Same.—Two acts under legislative consideration at the same time should be construed as contemporaneous acts in arriving at the intent of the legislature. *Ib.*

105. If a technical usage is not definite, uniform, and general, it is entitled to no weight in statutory construction. 21 Op. 179.

106. Same.—Assuming that the term "mortar steel," as employed in section 2 of the fortifications appropriation act of March 2, 1895 (28 Stat. 707), has not a settled technical meaning, it is properly construable as including any steel of such quality as is considered by experts to be adapted for use in the construction of mortars. *Ib.*

107. Same.—The assertion on behalf of a certain firm or corporation that the term in

question refers to steel of their manufacture, and that the section of the statute containing such term was introduced at the suggestion of their attorney, is not entitled to any consideration. *Ib.*

108. A treaty duly ratified is as much a part of the supreme law of the land as a statute. 23 Op. 545.

109. In custom laws, as in all others, the intent of the lawmakers is the law. 18 Op. 533.

110. Same.—Where, in the expression of that intent, a name is used describing an article which has a well-established commercial signification, that commercial signification should be adopted. *Ib.*

111. Same.—When the name is general and the tariff specific, it embraces the whole class, and questions of price, value, or accidental chemical components are immaterial. *Ib.*

112. Same.—The commercial signification of a name is that which those engaged in foreign and domestic sale, purchase, and exchange generally adopt to describe the article. *Ib.*

113. Same.—If it be disputed what this commercial designation embraces, it is to be determined upon a clear preponderance of evidence. *Ib.*

114. Same.—The ordinary rules of evidence are to be applied with reference to interest, character, and weight of testimony, to be received from those engaged in or familiar with commerce, trade, and traffic in the article. *Ib.*

115. Same.—Where a clear preponderance of evidence can not be adduced, departmental construction, tacitly approved by Congressional recognition, should turn the scale and be accepted as sufficient evidence of the legislative intent. *Ib.*

116. If there is any doubt as to the meaning of a statute imposing a tax, the doubt must be resolved in favor of exemption. 20 Op. 681.

117. The headings of tariff schedules in an act have little significance, they being intended only for general suggestions as to the character of the articles within the schedules. 21 Op. 66.

118. All doubts arising under paragraph 297 of the tariff act of 1894 (28 Stat. 66), are presumptively to be resolved in favor of the lower rate of duty, save where the act mentions or describes the same article in two

different places, when the higher rate governs. *Ib.*

119. The appropriation of specific funds "to be immediately available" ordinarily imposes the duty of expending them for the purpose named in the act. 21 Op. 420.

120. Revenue laws not to be strictly construed.—Sections 3985 and 3993, Revised Statutes, which impose penalties for carrying letters out of the mails over post routes unless in stamped envelopes bearing stamps of the proper denomination, are not in derogation of common right. They are revenue laws and are not to be strictly construed, though they impose penalties. 2I Op. 394.

121. Past history.—One of the surest methods of interpreting a provision in a tariff law is by its past history. 21 Op. 541.

122. Same.—If a special meaning has been attached to certain words in a prior tariff act it is presumed that Congress intended that they should have the same signification when used in a subsequent act in relation to the same subject-matter. 21 Op. 541.

123. Tax laws—Exemption.—The rule of construction in tax laws is that if there is doubt as to the liability of any instrument to taxation the construction is in favor of its exemption. 23 Op. 54.

124. "Chinese secretary."—The change of name from "Interpreter to legation to China" to "Chinese secretary" in the appropriation act for the diplomatic and consular service, approved April 4, 1900 (31 Stat. 60), did not create a new office, but is merely a new name for the same office, and an appointment to this position by the President does not require the confirmation of the Senate. 23 Op. 136.

#### STEAM ENGINEERS.

See DISTRICT OF COLUMBIA, 6.

#### STEAM PLATE-PRINTING MACHINES.

See PUBLIC PRINTING, 11.

#### STEAM REGISTERS.

See STEAMBOAT-INSPECTION SERVICE, 10.

#### STEAMBOAT-INSPECTION SERVICE.

1. The inconvenience contemplated by section 4409, Revised Statutes, authorizing a supervising inspector of steam vessels, "in any district where, from distance or other cause, it is inconvenient to resort to the local board, to inspect any steam vessel and the boilers of such steamer," etc., is such as grows out of the situation of the boat, or of the parties, viewed with reference to the location of the local board, whereby access to the latter is rendered difficult or expensive. 17 Op. 628.

2. Same.—Where such inconvenience exists, the authority of the supervising inspector is, by virtue of that section, concurrent with that of the local board; and in cases acted upon by him under that authority there is no appeal. *Ib.*

3. Same.—But where the supervising inspector resides in the same city with the members of the local board, and they are not unable to act, and access to them is as easy and unimpeded as to any like board in the same locality, such inconvenience does not exist, and the supervising inspector would not be warranted in discharging the duties of the local board. *Ib.*

4. Charter—Ferryboats.—The word "charter" as used in Rule VII, paragraph 2, of the "General Rules, etc., of the Board of Supervising Inspectors of Steam Vessels," covers the case of boats licensed, under a general law, by a county court to traverse ferry routes established by such courts. 18 Op. 16.

5. Same.—"Charter" seems to be a proper word to express a power of granting to individuals rights which otherwise belong to the public, whether such grant by the State is made directly or indirectly. *Ib.*

6. Same.—By "chartered ferry" is intended any ferry established in accordance with law. *Ib.*

7. Same.—Steam vessels plying regularly between Albany and Troy, in New York, for freight and passengers, would be ferryboats under the second clause of Rule VII, paragraph 2, above referred to. *Ib.*

8. Assistant inspectors—Appointment.—The provision for assistant inspectors in section 4414, Revised Statutes, is not controlled by the details of section 4415 as to either the method of their appointment or the profes-

sional qualifications which may be required by the appointing power. 18 Op. 30.

9. *Same.*—Should an inspection of life-preservers be found necessary, and in order to effect this some assistant to the local board must needs be appointed, the appointment of such assistant would be warranted by law. *Ib.*

10. The decision of the Board of Supervising Inspectors upon a matter properly submitted to it under section 4491, Revised Statutes, is not reviewable by the Secretary of the Treasury. 18 Op. 77.

11. Steam registers used on vessels propelled by steam, in order to be the subject of approval under section 4419, Revised Statutes, must be of a description which satisfies the requirements of both section 4418 and section 4419. 18 Op. 365.

12. The term "persons engaged in navigating the vessel," as used in section 4419, Revised Statutes, comprehends the officers and crew, those who are in the service of the vessel, and employed in its management, the working of its machinery, etc., during the voyage. The register is not only to be taken from the control of all persons so employed, but to be secured from such control by the inspectors. *Ib.*

13. An applicant for appointment as an inspector of boilers, under section 4415, Revised Statutes, should have not only the technical knowledge, but the actual professional experience of a practical engineer on a steam vessel. 19 Op. 632.

14. Inspectors of steam vessels—Filling vacancy—Notice of meeting of "board of designators."—In filling a vacancy occurring in any local board of inspectors of steam vessels the notice provided for in section 4415, Revised Statutes, for convening the "board of designators" should be such as to give each member a reasonable time to be present at the meeting and a knowledge of its object, although such notice is not required by the statute to be in writing, it would be advisable to require written notice by regulation. 19 Op. 648.

15. *Same.*—The members should meet together as a board, organize as a board, and act as a board in making the designation to fill the vacant or new inspectorship. *Ib.*

16. The alteration of a license of an engineer of steam vessels issued under section 4441, Revised Statutes, is not an offense within

sections 5418, 5479, or 5423, Revised Statutes. Revocation of the license, under section 4450, Revised Statutes, seems to be the only punishment provided by law for such case. 19 Op. 649.

17. Regulation in regard to issuing licenses.—Section 14 of rule 5 of General Rules and Regulations, in regard to issuing licenses as master of steam vessels, which was adopted by the Board of Supervising Inspectors and approved by the Secretary of the Treasury, was within the authority conferred by section 4405, Revised Statutes, and the same has now the force of law. 20 Op. 212.

18. The regulations provided by Title 52 of the Revised Statutes do not apply to American steam vessels while engaged in commerce beyond the jurisdiction of the United States. 21 Op. 52.

19. Expired inspection certificates can not be extended by consular officers of the United States; and there is no authority of law for sending local inspectors out of the country to make inspection. *Ib.*

20. The Board of Supervising Inspectors of Steam Vessels continue to have power to make regulations not inconsistent with the regulations in the act of August 19, 1890 (26 Stat. 320), for the prevention of collisions at sea. That Board is not a "local authority" within the meaning of article 30 of the act of August 19, 1890 (26 Stat. 320). 21 Op. 106.

21. Section 4415, Revised Statutes, so far as it prescribes the method by which vacancies on the board of inspectors of hulls of steam vessels shall be filled, was repealed by the civil-service act of January 16, 1883 (22 Stat. 403). 21 Op. 393.

22. *Same.*—The board provided by said section can not act as a board of examiners under the civil-service act, unless its members are selected and appointed as such board of examiners under section 5, Rule IV. *Ib.*

23. Compulsory testimony.—A licensed officer of a steam vessel, duly summoned to give testimony in a hearing before a board of United States local inspectors of steam vessels, who refuses to answer questions which are, in the opinion of the board, material and proper, may be compelled to answer, under the penalty of suspension or revocation of his license or otherwise. 24 Op. 136.

24. *Same.*—Contempt.—A refusal on the part of a witness to answer a proper question

pertinent to the issue before a court is a contempt, and while this power may not be absolute in this special tribunal, which is not given the right to impose fines or imprisonment for disobedience to its authority, nevertheless the principle may be invoked so far as the special service and special discipline go. *Ib.*

25. *Same*—Licensed officer may not refuse to answer on the ground that it may subject him to a penalty.—Such licensed officer when charged with a violation of section 4449, Revised Statutes, and on trial before the above-named board on such charge has no right to refuse to answer a question material to the inquiry upon the ground that his answer may subject him to the penalty provided in that section. *Ib.*

26. *Same*.—Section 4449, Revised Statutes, is a remedial, not a penal, statute and the revocation of a license as therein provided may be viewed rather as a remedy to insure better efficiency in the Steamboat-Inspection Service than as a punishment for an offense committed. *Ib.*

27. *Same*—May not withhold information and remain in the service.—Such licensed officers are engaged in a special service, peculiarly related to the Government; they are endowed with certain privileges and subject to certain burdens, and paramount considerations of the good of the service require that such an officer shall not be permitted to withhold any information material to an inquiry affecting the service and yet remain a member of that service. *Ib.* (p. 137).

28. The Board of Supervising Inspectors of Steam Vessels alone is authorized, under section 4405, Revised Statutes, to determine what shall constitute "a full complement of licensed officers and full crew," of steamers carrying passengers, before leaving port, as required by section 4463, Revised Statutes. This duty can not be delegated to the local inspectors of hulls and boilers. 25 Op. 56.

29. Called meetings of the Board of Supervising Inspectors may be held at places other than Washington, within the judgment of the Secretary of Commerce and Labor, section 4405 specifying merely the place where the annual meeting of the Board shall be held. 25 Op. 67.

30. Modification of regulations.—The Secretary of Commerce and Labor is not authorized

by section 4462, Revised Statutes, to amend, modify, or repeal existing regulations, or to adopt new regulations for the enforcement of the provisions of Title 52, Revised Statutes, entitled "Regulation of Steam Vessels," without prior action thereon by the Board of Supervising Inspectors. The Secretary has, therefore, no authority whatever in the matter, except as conferred by section 4405, Revised Statutes. *Ib.*

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#### STEAMBOATS.

For regulations governing at yacht races, *see* DEPARTMENT OF COMMERCE AND LABOR, 3. *See also* VESSELS.

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#### STEEL CHAINS.

*See* CUSTOMS LAW, 272.

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#### STEEL SHAFT.

*See* CUSTOMS LAW, 197.

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#### STEVENS, ROBERT L.

RELEASE OF MORTGAGE—THE "STEVENS BATTERY" WAR VESSEL. *See* NAVY, 212.

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#### SOUTH AFRICA.

*See* NEUTRALITY, 9.

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#### STIPULATION.

*See* TREASURY DEPARTMENT, 15, 16; DEPARTMENT OF JUSTICE, 1; UNITED STATES, 26.

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#### STRONG, SAMUEL.

CLAIM OF. *See* DISTRICT OF COLUMBIA, IX.

**STUDENT INTERPRETERS AT LEGATION  
TO CHINA.**

**Appointment of.**—The President is authorized, under the provisions of the diplomatic and consular appropriation act of March 22, 1902 (32 Stat. 78), to appoint the ten student interpreters at the legation to China therein provided for without sending their names to the Senate for confirmation. 24 Op. 52.

**SUBLETTING.**

**OF MAIL CONTRACTS.** *See* POSTAL SERVICE, III, b.

**SUBPŒNA OF GOVERNMENT EMPLOYEE.**

*See* EXECUTIVE DEPARTMENTS, 47.

**SUBSIDIARY COINAGE.**

*See* TREASURY DEPARTMENT, 92.

**SUBSTITUTE CLERKS.**

*See* CIVIL SERVICE, 108.

**SUGAR.**

*See* CUSTOMS LAWS, 84–86, 204, 379.

**SUGAR BOUNTIES.**

*See* BOUNTY.

**SUIT.**

**AUTHORITY TO DISCONTINUE.** *See* DEPARTMENT OF COMMERCE AND LABOR, 17.  
**INSTITUTION OF PROCEEDINGS AGAINST A STATE.**  
*See* ARKANSAS.

**SUMMARY COURTS.**

*See* ARMY, VI.

**SUNDAY.**

The branch post-office at the World's Fair of 1893 must be closed on Sunday. Act of April 25, 1890 (26 Stat. 62), section 4 of the act of July 13, 1892 (27 Stat. 148), and the provision in the act of August 5, 1892 (27 Stat. 168), relating to Sundays, considered in connection therewith. 20 Op. 598.

**SUNDAY MAGAZINE SECTIONS.**

**OF NEWSPAPERS.** *See* POSTAL SERVICE, 120–122.

**SUPERINTENDENT OF STATE, WAR, AND  
NAVY BUILDING.**

*See* STATE, WAR, AND NAVY BUILDING.

**SUPERVISORS OF ELECTIONS.**

Supervisors of elections are entitled to per diem compensation where they have served any given number of days not exceeding ten, and the fact of such service duly shown. It is not for the Attorney-General to determine whether their period of service is reasonable or unreasonable. 18 Op. 102.

**SUPERVISING INSPECTOR OF IMMIGRATION.**

*See* IMMIGRATION, II, c.

**SUPERVISING INSPECTORS OF STEAM VES-  
SELS.**

*See* STEAMBOAT-INSPECTION SERVICE.

**SUPPLIES.**

*See* ARMY, I, g; NAVY, I, b; EXECUTIVE DEPARTMENTS, IV.

**SUPREME COURT OF THE UNITED STATES.**

*See* COURTS, II, c.

## SURETY

1. **Member of Congress.**—The provisions of sections 3739, 3740, and 3741, Revised Statutes, considered, and *held* that, upon a fair construction thereof, a Member of Congress may be lawfully accepted as a surety on the bond of a contractor with the United States. 18 Op. 286.

2. **A contract for ocean mail service** for ten years can not be changed to one with the same party for five years, unless the party procure the same by new bidding, after due advertisement, and any change in the original contract releases the sureties from their liability thereunder. 20 Op. 321.

3. **Discharge of sureties.**—Section 2 of the act of August 8, 1888 (25 Stat. 387), is absolute as regards the discharge of sureties if suit on the bond be not instituted "within five years after such statement of said account" by the accounting officer of the Treasury. It makes no exception in case the accounting officer does not make such statement as early as he should, or when a deficiency is discovered by him. 22 Op. 612.

4. **Same.**—Whether the accounting officer makes the statement showing an indebtedness to the United States as early as he should, or does not, the limitation fixed by section 2 of that act begins to run only from the time that the accounting officer of the Treasury makes the statement of account showing an indebtedness to the United States, as provided in that section. 22 Op. 613.

5. **When notification to sureties should be given.**—It was not intended by the act of August 3, 1888, section 1 (25 Stat. 387), that the accounting officer should delay notice until it has become certain that there is a deficiency; nor, on the other hand, should he always report a deficiency whenever from the account of a disbursing officer it may appear, *prima facie*, that there is one. This may be from insufficient vouchers or evidence, or from clerical error or omission, or in one or more of various ways not inconsistent with a proper disbursement of the moneys in his hands. Whenever in the exercise of a sound judgment, and after a reasonable time allowed for explanation and correction, it appears to the accounting officer that there is a probable deficiency, he should notify the head of the department, as provided in section 1 of the act. *Id.*

6. **Liability of surety on bond of dishonest postal clerk.**—Where a postal clerk has given the bond required by section 3 of the act of June 13, 1898 (30 Stat. 440), the condition of the bond being that the principal shall faithfully discharge all duties and trusts imposed on him either by law or by the rules and regulations of the Post-Office of the United States, and shall faithfully account for and pay over to the proper official all money that shall come to his hands, the surety upon such bond is liable to the full amount thereof for the entire amount of money stolen by the clerk so bonded. 23 Op. 476.

7. **Same.—Extent of liability.**—In such case the liability of the surety is fixed by the condition of the bond, and is not affected by the fact that by section 3926, Revised Statutes, as amended by the act of February 27, 1897 (29 Stat. 599), the Government limits its liability for the loss of any first-class registered letter to an amount not exceeding \$10. *Id.*

8. **Same.**—The liability of the principal is the liability of the surety, and the Government occupying the field of mail transportation to the exclusion of all others, and inviting the fullest possible use of its facilities, is morally bound to recover from a dishonest official or his surety the entire amount of his embezzlement, and is equally bound in conscience, as the statute recognizes, to return to the owner of a registered letter the entire amount thus recovered. *Id.*

9. **Surety companies.**—The Secretary of the Navy may, in his discretion, under section 7 of the act of August 3, 1886 (24 Stat. 216), authorizing proposals for certain work to be invited which shall be subject to "such provisions as to bonds and security for the quality and due completion of the work as the Secretary of the Navy shall prescribe," accept as surety (instead of an individual) a body corporate empowered to assume that relation. 19 Op. 57.

10. **The American Surety Company of New York** has power, under the laws of New York, to assume the relation of surety upon a bond to the United States conditioned for the faithful performance of a contract to furnish steel gun forgings to the latter. 19 Op. 66.

11. **The Secretary of the Navy** has power, under section 1383, Revised Statutes, to approve a pay-officer's bond in which the sureties are corporations, or a corporation joined with

a natural person, if he deems such sureties sufficient. 19 Op. 175.

12. It is competent for the Secretary of State, under section 1697 of the Revised Statutes, to accept as sureties upon official bonds of United States consular officers, corporations organized under State or United States laws as surety or guaranty companies authorized by their charter to undertake such obligations. 20 Op. 16.

13. The act authorizing the acceptance of bonds and undertakings of surety and fidelity companies (28 Stat. 279) does not permit the imposition of conditions and regulations by Government officials relative to the percentage of capital stock to liability on a single official bond, or the minimum rates to be charged for such insurance, etc. 22 Op. 421.

14. If the laws of a State under which a surety company is incorporated limit the amount of liability to a certain percentage of the capital, which can be incurred on account of any one partnership or association, and if a greater amount of liability is incurred it is to be secured by a collateral agreement of indemnity, such provision is thereby made a part of its charter, and to that extent is it restricted in its dealings with the United States. *Ib.*

15. **Surety companies—Process agents.**—A surety company authorized by the act of August 13, 1894 (28 Stat. 279), to transact a surety business, which has appointed an agent at Guthrie, Okla., upon whom all lawful process issued against it may be served, and has filed copies of such appointment at all places in that Territory where court is held, thereby consents to accept service upon such agent of a summons issued from any county in that Territory, and effectuates the purpose of section 2 of that act. 25 Op. 598.

16. **Same.**—Section 5 of that act does not so qualify section 2 thereof as to make the appointment of a process agent in the district only where the bond is returnable or filed a compliance with the statute. The purpose is also to require the appointment of an agent in the district where the contract is to be performed. *Ib.*

17. **Same.**—The Government can enforce a contract between it and a surety company in Oklahoma, although the company has not made the deposit required by the territorial act of Oklahoma of March 15, 1905. *Ib.*

*See also* CONTRACTS, 53-56; POSTAL SERVICE, 28, 29, 96, 98; TREASURY DEPARTMENT, 86-88, 90.

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### SURETY COMPANIES.

*See* SURETY, 9-17.

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### SURGEON-GENERAL.

*See* ARMY, 36, 43-46; MARINE-HOSPITAL SERVICE.

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### SURVEY.

*See* PUBLIC LANDS, IV; INDIANS, 37, 38, 53.

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### SURVEYOR OF CUSTOMS.

If there be no collector of the port of Galena, Ill., and all the duties of that office are imposed upon the surveyor of customs, then his acts done in performance of the duties and functions of the office of collector of the port are as valid and effective as if done by a collector of the port. His certificate, in conjunction with that of the local inspector of steamboats, is sufficient to authorize the Secretary of War to draw his warrant as provided in the act of Congress authorizing the city of Galena, Ill., to complete certain improvements of the channel of the Galena River. 20 Op. 700.

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### SUSPENSION.

OF OFFICER. *See* OFFICE AND OFFICERS, 48.  
OF TONNAGE TAXES. *See* SHIPPING, III, b.  
OF WEAHER. *See* CUSTOMS LAW, II, h.

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### SWAIN, DAVID G.

(Judge-Advocate General.)

*See* 18 Op. 113.



**SWAMP-LAND GRANTS.**

*See* PUBLIC LANDS, VII.

**TACOMA HARBOR.**

*See* NAVIGABLE WATERS, 97.

**"TARANTULA," THE.**

*See* SHIPPING, 69.

**TARIFF.**

*See* CUSTOMS LAW.

**TAXES.**

*See* INTERNAL REVENUE; SHIPPING, III; IMMIGRATION, V; INDIANS, III, g; PORTO RICO; PHILIPPINE ISLANDS; STATE TAX.

ON BANK CIRCULATION. *See* INTERNAL REVENUE, 32-41.

ON BILLS AND NOTES. *See* INTERNAL REVENUE, 78-86.

ON RETAIL LIQUOR DEALERS AND ON SPIRITUOUS LIQUORS. *See* INTERNAL REVENUE, II, e.

ON PROPERTY CEDED TO THE UNITED STATES—TAX LIENS. *See* UNITED STATES, 75.

INCOME TAX. *See* INTERNAL REVENUE, II, i.

**TAX RECEIPTS.**

Tax receipts are sufficient evidence that the land is discharged and redeemed from a tax sale and taxes, and a deed to such land held sufficient to convey to the Government a valid title. 20 Op. 430.

**TEA BOARD OF THE GENERAL APPRAISERS.**

*See* CUSTOMS LAWS, 464.

**TELEGRAPHS AND TELEPHONES.**

1. The Post-Office Department has no power, under existing laws, to make contracts for the

transmission of intelligence by telegraph for the general public, as a part or branch of the postal service. 19 Op. 650.

2. Mail matter, as defined by statute, does not include telegraphic correspondence, as such; nor does the power given the Postmaster-General to contract for carrying the mail include authority to contract for sending messages by telegraph for the benefit of the people at large. *Ib.*

3. Telegraph messages sent over bond-aided railway's telegraph system—Compensation.—Where the Government has the power to send telegraph messages either by a bond-aided railway's telegraph system or by an independent company system located over the bond-aided railway company's route, and delivers them to the independent company's system without requesting that they be forwarded over the bond-aided railway route, payment must be made at the rate prescribed by the Postmaster-General. 20 Op. 581.

4. *Semble*, it is not improper to delay payment of the claim until the case involving the point now soon to be argued in the Supreme Court of the United States is decided. *Ib.*

5. International agreement.—The United States have power, either alone or in cooperation with other countries, to impose conditions upon the operation of any wireless-telegraph system which conveys messages to or from the United States. 24 Op. 100.

6. Same—Regulation of commerce.—Such transmission is commerce, and the power of the United States to regulate commerce and to preserve the territorial integrity of this country does not depend upon the means employed, but upon the end attained. *Ib.*

7. Telegraph grants—Acceptance by an individual.—The mere filing by an individual with the Postmaster-General of an acceptance of the restrictions and obligations of the act of July 24, 1866 (14 Stat. 221), entitled "An act to aid in the construction of telegraph lines, etc.," and the acts amendatory thereto, neither confers upon such person the benefits and privileges, nor subjects him to the burdens and restrictions of that act, because he is not a telegraph company organized under the laws of one of the States. 24 Op. 603.

8. Same.—The words "any telegraph company organized under the laws of any State," used in the act of 1866, were used advisedly,

and with a recognition that they did not include a "person" or an individual. *Ib.*

9. Telephone companies are not within the provisions of Title LXV of the Revised Statutes, or entitled to avail themselves of the privileges thereby granted. 19 Op. 37.

*See also* CONCESSIONS 9-18; AND CABLES.

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#### TEMPORARY APPOINTMENT.

*See* OFFICE, AND OFFICERS II; AND PRESIDENT, I.

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#### TEMPORARY CLERKS.

TRANSFER OF. *See* CIVIL SERVICE, IV., b.

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#### TENNESSEE CENTENNIAL EXPOSITION.

*See* EXPOSITIONS AND FAIRS, II.

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#### TENURE-OF-OFFICE LAW.

*See* OFFICE, AND OFFICERS, IV.

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#### TERM OF OFFICE.

*See* INTERSTATE COMMERCE, 1, 2.

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#### TERRITORIES.

**Legislature—Engrossing clerk.**—The clause, "one enrolling and engrossing clerk, at \$5 per day," in the act of June 19, 1878 (20 Stat. 193), relating to the government of Territories, which repeals section 1861, Revised Statutes, is to be construed as providing for the employment of but one clerk at the per diem mentioned. 18 Op. 540.

*See also* ALASKA, ARIZONA, AND OKLAHOMA.

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#### TESTIMONY.

*See* EVIDENCE; WITNESSES; COURTS-MARTIAL, III; EXECUTIVE DEPARTMENTS, 35.

#### THURMAN ACT.

(Act of May 7, 1878; 20 Stat. 56.)

*See* 19 Op. 491; 21 Op. 105, 145.

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#### TICKETS.

ISSUED BY ICE COMPANIES. *See* INTERNAL REVENUE, 83.

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#### TIDE-WATER LANDS.

Under Spanish laws lands under tide water to high-water mark in the ports and harbors in the Spanish West Indies belonged to the Crown, and as such, by treaty of session, have become a part of the public domain of the United States. 22 Op. 544.

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#### TIGER ISLAND, FLA.

**Condemnation—Title.**—Under and by virtue of condemnation proceedings in the proper court for acquisition of certain lands on Tiger Island, Fla., in which the court directed the United States marshal, upon payment of amounts awarded and the sums taxed as costs, to make and deliver to the United States a good and sufficient deed of the premises: *Held* that on compliance with this order a valid title to the lands will rest in the United States. 20 Op. 43.

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#### TIMBER DEPREDATIONS.

*See* PUBLIC LANDS, XIII; INDIANS, IV; RAILROADS, III, b; NAVY DEPARTMENT, II, 19, 20.

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#### TIME, CHANGE OF.

**Must be done by legislation, not by Executive authority.**—A change of time at Washington, D. C., by adopting the seventy-fifth meridian in lieu of the true meridian at that

place (being a change of eight minutes and twelve seconds), can not be effected by mere Executive authority. It can only be done by appropriate legislation. 17 Op. 619.

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#### TITLE.

TO CABRAS ISLAND. *See* CABRAS ISLAND.  
 TO GUANTANAMO NAVAL STATION. *See* GUANTANAMO NAVAL STATION.  
 TO KAHAWIKI MILITARY RESERVATION HAWAIIAN ISLANDS. *See* RESERVATIONS AND PARKS, 32.  
 TO LOS BANOS MILITARY POST. *See* RESERVATIONS AND PARKS, 33.  
 TO LOT 144, CITY OF AGANA. *See* GUAM, 6.  
 TO MIRAFLORES ISLAND. *See* MIRAFLORES ISLAND.  
 TO SITE FOR FORT BRADY. *See* RESERVATIONS AND PARKS, 6.  
 OF RETIRED OFFICERS OF THE VOLUNTEER ARMY. *See* ARMY, 223.  
 OF STAFF BUREAU CHIEFS. *See* NAVY, 93-97.  
 OF ARMY OFFICERS. *See* ARMY, II, d.  
 OF NAVAL OFFICERS. *See* NAVY, II, d.  
*See also* BATTERY ISLAND, MD.; HOSPITAL LIGHT STATION; POINT PETER, Ga.; SHILO BATTLEFIELD; AND DISTRICT OF COLUMBIA, VII.

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#### TOBACCO.

*See* CUSTOMS LAW, 206, 207.

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#### TONNAGE TAX.

*See* SHIPPING, III, b.

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#### TRADE DOLLAR.

The United States Treasurer is not authorized to receive "trade dollars" at par in exchange for silver certificates under the third section of the act of February 28, 1878 (20 Stat. 25). Nor are such dollars receivable at par in payment of public dues. 18 Op. 417.

#### TRADE-MARKS.

1. A foreigner simulating a trade-mark of a domestic manufacturer can not obtain the right to send fraudulently marked goods into the country merely by recording his fraudulent mark under section 6 of the act of August 27, 1894 (28 Stat. 547), before the domestic manufacturer has taken the steps necessary to protect himself. 21 Op. 260.

2. Registration of trade-marks—Porto Rico.—Porto Rico being an organized Territory of the United States, and the laws of the United States not locally inapplicable having been extended to that island; its residents are entitled to register trade-marks in the United States, as provided in the act of Congress of March 3, 1881 (21 Stat. 502). 23 Op. 634.

3. Same.—The Philippine Islands not being organized Territories of the United States as contemplated by section 1891, Revised Statutes, the residents of those islands are not, as such, entitled to the privileges of the trade-mark law. *Id.*

4. Same—Cuba.—While Cuba is a foreign country and the treaties of Spain no longer apply there, yet it is now being governed by the United States; and since the law in force there gives to citizens of the United States similar privileges to those given by our trade-mark law, Cuba may be regarded as one of the countries with which we have reciprocal arrangements, and a person located there is entitled to register trade-marks under our law. *Id.*

5. Entry of goods bearing foreign trade-mark.—The importation into the United States of an article bearing the genuine trade-mark of the maker, by an importer who is not the owner of the trade-mark, is not forbidden by section 11 of the tariff act of July 24, 1897 (30 Stat. 207), although such trade-mark has been properly registered in the United States and all rights thereunder have been transferred and belong to another party. 24 Op. 551.

6. Same.—The purpose of that section is twofold—to protect the domestic manufacturer against encroachment upon his trade-mark and the public from the imposition of imported articles assuming domestic names. It is the simulation or counterfeit, and not reality or genuineness, at which the section is aimed. *Id.*

7. Owners of trade-marks who are residents of the Philippine Islands are not entitled to obtain registration thereof under our laws, for the reason they are not "domiciled in the United States or located in any foreign country or tribes, etc.," as required by the act of March 3, 1881 (21 Stat. 502). Opinion of February 19, 1902 (23 Op. 634), adhered to. 25 Op. 179.

#### TRAMWAY.

Under Spanish law a tramway is a railroad constructed on a public highway. 22 Op. 551.

#### TRANSFER.

OF APPROPRIATIONS. *See* APPROPRIATIONS, 27.

OF GOODS THROUGH THE UNITED STATES. *See* CUSTOMS LAW, III, j.

OF CONTRACTS. *See* CONTRACTS, 97-100.

OF LAND FROM ONE EXECUTIVE DEPARTMENT TO ANOTHER. *See* EXECUTIVE DEPARTMENTS, 13.

OF VOLUNTEER OFFICERS TO REGULAR NAVY-RANK. *See* NAVY, 70.

TO CLASSIFIED SERVICE. *See* CIVIL SERVICE, IV, b.

APPLICATION FOR. *See* CIVIL SERVICE, 67.

#### TRANSPORTATION.

OF TROOPS. *See* RAILROADS, II, IV.

OF LIVE STOCK. *See* RAILROADS, IV.

OF THE MAILS. *See* POSTAL SERVICE, III.

OF ENLISTED MEN. *See* NAVY, III, e; RAILROADS, 14, 15.

OVER BOND-AIDED ROADS. *See* RAILROADS, II.

OVER LAND-GRANT ROADS. *See* RAILROADS, IV.

TRANSPORTATION ORDERS. *See* UNITED STATES, 52.

#### TRANSSHIPMENT.

*See* IMMIGRATION, 71.

#### TRAVELER'S CHECK.

*See* INTERNAL REVENUE, II, e, 16.

#### TRAVELING EXPENSES.

*See* ARMY, 185; UNITED STATES MARSHALS, 4.

#### TREASURER OF THE UNITED STATES.

*See* TREASURY DEPARTMENT, II, b.

#### TREASURY DEPARTMENT.

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b. *Payment*, 9-16.

c. *Miscellaneous*, 17-19.

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##### I. In General.

##### a. *Jurisdiction and Power.*

1. *Anchorage and anchorage grounds.*—Matters arising under the acts of May 16, 1888 (25 Stat. 151), February 6, 1893 (27 Stat. 431), March 6, 1896 (29 Stat. 54), and June 6, 1900 (31 Stat. 682), relating to anchorage and anchorage grounds, have been transferred by the act of February 14, 1903 (32 Stat. 825), from the Treasury Department to the Department of Commerce and Labor. 25 Op. 37.

**2. Decisions of Board of General Appraisers.**—While the Treasury Department may accept decisions of the Board of General Appraisers as a rule of action to be followed in the classification of other importations, it is not compelled by law to do so. 20 Op. 648.

**3. Declarations.**—The Treasury Department has no authority to insist that declarations upon goods obtained by purchase under section 3 of the act of June 10, 1890 (26 Stat. 131), shall contain the further clause declaring that the prices in the invoice represent the actual foreign-market value on the day of shipment, etc. 22 Op. 405.

**4. Marine-Hospital fund.**—The Treasury Department is obliged, under existing laws, to extend the benefits of the Marine-Hospital fund to the sick and disabled officers and seamen of the Revenue-Cutter Service. 21 Op. 365.

**5. The Treasury Department may legally accept the revenue cutter Calumet, subject to a creditor's lien, and, after satisfying the lien, proceed against the contractor's bondsmen to recover a payment in excess of the requirements of the contract.** 21 Op. 70.

**6. Return certificate of returning Chinese laborer.**—The Treasury Department has no authority to issue a return certificate *nunc pro tunc* to a Chinese laborer, holding a certificate of residence under the act of May 5, 1892 (27 Stat. 25), who, prior to his leaving this country, has made application under oath for a return certificate, but who has not filed such application with the collector of customs nor received a return certificate, as required by the treaty of 1894 with China (28 Stat. 1210) and the act of September 13, 1888 (25 Stat. 478), although such person may have believed that he had done all that was incumbent upon him, and may have been misled by the action of the Government officer in affixing to such application his certificate of departure. 23 Op. 619.

**7. Jurisdiction in Chinese-exclusion cases.**—In the hearing of cases arising under the Chinese-exclusion laws the duties of a United States commissioner are judicial rather than ministerial. Consequently the Treasury Department has no authority to issue instructions to United States commissioners as officers charged with the enforcement of these laws. 23 Op. 40.

*See also* TREASURY DEPARTMENT, 26-30, 154-156.

**8. False labeling or branding of dairy and food products.**—The Treasury Department has no jurisdiction or power under the act of March 3, 1903 (32 Stat. 1157), to prevent or punish the false labeling or branding of dairy or food products after they have passed the customs-house and are delivered to the owner or consignee. 24 Op. 675.

JURISDICTION IN CUSTOMS MATTERS. *See* appropriate headings under CUSTOMS LAW.

#### b. *Payment.*

**9. Payment of claims.**—A proper construction of the last clause of the act of March 3, 1891 (26 Stat. 1445, 1456), for the allowance of certain claims for stores and supplies taken and used by the United States Army as reported by the Court of Claims under the provision of the act of March 3, 1883 (22 Stat. 485), known as the Bowman Act, does not warrant the making of a Treasury draft payable or deliverable to any other parties than those named in the act or to their executors or administrators. 20 Op. 115.

**10. Payment.**—When a balance is due a contractor and there are conflicting claimants the proper course is to keep the custody of the balance until the respective rights of claimants to it have been determined by a decree of the court. 20 Op. 578.

**11. Payment of claim—Attorney's fees.**—A contract between an attorney and a client for the collection of a claim against the United States, in which it is stipulated that the attorney shall present, prosecute, and recover the claim as the agent and attorney of the client, is "a power of attorney, order, or other authority for receiving payment" of the money so recovered within the meaning of section 3477, Revised Statutes, and unless executed in accordance with the provisions of that section is absolutely null and void. 25 Op. 279.

**12. Same—Warrants.**—The practice of the Treasury Department of delivering warrants to attorneys who have prosecuted claims before the Department, except under the safeguards of section 3477, Revised Statutes, is not warranted by law. *Ib.*

**13. Same.**—The Secretary of the Treasury may recall his action in delivering a warrant to an attorney not entitled under the law to receive it, and may take necessary measures,

by issuing a new warrant or otherwise, to pay the money involved to the party for whom it was appropriated by Congress. *Ib.*

14. **Same.**—In so recalling a warrant and issuing a new one, the Government does not become liable to the attorney for the amount of his fee for recovering the claim. *Ib.*

15. **Payment of judgment on stipulation.**—If the right of appeal from judgments of the Court of Claims in the direct-tax cases be waived by both parties by stipulations on record, no legal objection would exist to the payment by the Treasury Department of such claims prior to the expiration of the ninety days within which appeals must be taken. 20 Op. 547.

16. **Same.**—It is, however, deemed unwise for the Department of Justice to adopt any general rule giving such stipulations. *Ib.*

*See also* TREASURY DEPARTMENT, II, h (accounting officers); CLAIMS, I, g; DIRECT TAXES; and CONTRACTS, 92, 132-147, and VI, 3 (d).

#### *c. Miscellaneous.*

17. **Leaves of absence.**—The operation of the act of March 3, 1893, with reference to leaves of absence in the Treasury Department, is confined to clerks and employees in the city of Washington. 21 Op. 338.

*See also* LEAVES OF ABSENCE.

18. **The appropriation for contingent expenses,** independent treasury, 1885 (23 Stat. 449), is not applicable to the payment of expenses of special agents of the Treasury employed to investigate the affairs of subtreasurers. 18 Op. 232.

19. **The disposition of useless papers** which have accumulated in the office of the Auditor of the Treasury for the Post-Office Department is governed by the act approved February 16, 1889 (25 Stat. 672). 21 Op. 151.

## II. Officers.

### *a. Secretary of the Treasury.*

20. **Appointment.**—The Secretary of the Treasury is authorized under the provisions of the act of March 2, 1895 (28 Stat. 911), relative to the proposed new Government

building at Chicago, to make temporary appointments of draftsmen and skilled service without certification from the Civil Service Commission. 21 Op. 261.

21. **Appointment of special disbursing agents, public buildings.**—The Secretary of the Treasury is given authority by section 3658, Revised Statutes, to appoint agents for the disbursement of moneys appropriated for the construction of public buildings where there is no collector of customs at the place of the location of such buildings. 25 Op. 536.

22. **Same.**—The words "the place of location of any public work," as used in that section, mean some place, city, or town within a collection district, and not the whole district. *Ib.*

23. **Same.**—The doctrine announced by the Supreme Court of the United States in the case of *Bartlett v. United States* (197 U. S. 230) should not be extended beyond the particular facts in that case. *Ib.*

24. **Same.**—Sections 255, 3654, 3657, and 3658, Revised Statutes, and the acts of March 3, 1875 (18 Stat. 415), and of August 7, 1882 (22 Stat. 306), relating to the appointment of disbursing agents for the payment of moneys appropriated for the construction of public buildings, are not inconsistent, and, except as one modifies another, may all stand together. *Ib.*

25. **The Secretary of the Treasury may defer the qualification of an assistant treasurer** until a proper count can be made of the funds in the subtreasury under a predecessor, in accordance with the custom of the Treasury Department. 25 Op. 636.

26. **Chinese.**—Under section 7 of the act of May 5, 1892 (27 Stat. 25), the Secretary of the Treasury may authorize the landing at a port in this country of Chinese sentenced to deportation and their detention at said port until the vessel returns and is ready to proceed on her return voyage. 21 Op. 18.

27. **Chinese — Certificate for reentry — Form.**—The Secretary of the Treasury has power to require the production of a certificate, in such form as he may prescribe, evidencing the right of certain subjects of China to enter the United States, and has authority to require that Chinese laborers leaving the United States temporarily shall return to this country only at the ports from which they depart. 21 Op. 68.

**28. Chinese.**—The authority vested in the Secretary of the Treasury by the act of August 18, 1894 (28 Stat. 390), to determine finally and conclusively whether or not a Chinese person shall be admitted to this country, may be exercised in such manner as will keep faith and do no injustice to a Chinese who seeks to return. 22 Op. 324.

**29. Chinese—Hawaiian Islands.**—The Secretary of the Treasury has authority to admit to the Hawaiian Islands such Chinese persons as departed therefrom under regulations of the existing government allowing them to return, as they are not excluded by the extension to the islands of the law and regulations now operative within the United States. 22 Op. 353.

**30. Chinese—Tennessee Exposition.**—The Secretary of the Treasury has no authority to limit the number of Chinese to be admitted to the United States as participants in the Tennessee Exposition. 21 Op. 518.

**31.** The Secretary of the Treasury has no authority under section 3755, Revised Statutes, to enter into a contract with a private individual for the recovery of money paid on a judgment which was subsequently set aside as fraudulent. 32 Op. 411.

**32. Eminent domain.**—The Secretary of the Treasury can not by contract bind the Government to exercise its power of eminent domain, to enable persons to sell to the Government land which they do not own. 19 Op. 269.

**33. Investment of trust funds derived from sale of school farm lands.**—The investment of trust funds (money derived from the sale of school farm lands) made by the Secretary of the Treasury, under the provisions of the act of March 3, 1873 (17 Stat. 600), and section 3 of the act of May 7, 1878 (20 Stat. 58), in 5 per cent bonds of the United States, which have since been called for payment, may be continued by him in the same bonds at 3½ per centum, in accordance with the circular of the Treasury Department of May 12, 1881, or he is at liberty to pay off such bonds and invest the proceeds in any other bonds of the United States for the benefit of the trusts mentioned in the provisions aforesaid. 17 Op. 217.

**34. Remission of forfeiture.**—Section 5294, Revised Statutes, as amended by the act of December 15, 1894 (28 Stat. 595), applied to fines and penalties only, and does not author-

ize the Secretary of the Treasury to remit a forfeiture. 21 Op. 291.

**35. Remission of fine or penalty.**—The Secretary is not authorized under Title 68 to remit a fine or penalty incurred for violation of the alien immigration laws. 20 Op. 705.

**36. Same.**—Section 5293, Revised Statutes, is liable to erroneous construction by reason of defective punctuation. It may be understood to mean "any person who shall have incurred any fine, penalty or forfeiture, or disability, or ["who"] may be interested in any vessel or merchandise which has become subject to any seizure, forfeiture, disability, thus providing for two distinct classes of cases. By reference to the original act (1 Stat. 506), it will be seen by the title that "any person" and "any fine, penalty," etc., is limited to the "certain cases therein mentioned." *Ib.*

**37. Remission of fines.**—The act of March 3, 1891 (26 Stat. 1084), confers no authority upon the Secretary of the Treasury to remit fines imposed on a vessel or her master for allowing the escape of alien immigrants whose deportation has been ordered. 23 Op. 271.

**38. Same.**—Neither is the power of remission in such cases conferred by section 5294, Revised Statutes, as amended March 2, 1896 (30 Stat. 39). *Ib.*

**39. Same—Return of deposit.**—The Secretary has authority to return a deposit to cover a fine which might be due, but which turns out not to have been incurred. Such return would not be a remission of a fine or penalty, but the restitution of an amount to which the Government was never justly entitled. *Ib.*

The general doctrine expressed in the opinion of February 3, 1894 (20 Op. 705), concurred in. *Ib.*

**40. Remission of Penalties Illegally Imposed.**—The power of remitting fines, penalties, etc., arising under the laws relating to vessels or seamen, given by section 26 of the act of June 26, 1884 (23 Stat. 59), to the Secretary of the Treasury, does not extend to cases where a competent judicial tribunal shall have decided that such fines, penalties, etc., were legally imposed. 18 Op. 282.

**41. Remission of internal-revenue penalties.**—It is within the discretion of the Secretary of the Treasury, under section 5293, Revised Statutes, to remit a penalty imposed under section 3176, Revised Statutes, for

failure to render a return or list of taxable property, required by the internal-revenue laws (sec. 3173, Rev. Stats). 17 Op. 433.

**42. Remission of penalty.**—The Secretary of the Treasury has authority, under section 5293, Revised Statutes, to remit the penalty imposed on a national bank for its failure to make a timely return of its liability for the special tax levied under section 2 of the act of June 13, 1898 (30 Stat. 448). 23 Op. 398.

**43. Same.**—The words "any revenue laws" found in that section authorize the remission of a penalty under the internal-revenue laws as well as under the customs-revenue laws. *Ib.*

<sup>1</sup> Opinion of Attorney-General Brewster of July 28, 1882 (17 Op. 433), concurred in. *Ib.*

REMISSION OF FORFEITURE FOR UNLAWFUL KILLING OF SEALS. *See* SEAL FISHERIES, I.  
REMISSION OF FINES, PENALTIES, AND FORFEITURES INCURRED UNDER THE CUSTOMS LAW. *See* CUSTOMS LAW, IX, g.

*See also* IMMIGRATION, VI.

**44. Compromise.**—In passing upon cases submitted to him for compromise, under sections 3229 and 3469, Revised Statutes, the Secretary of the Treasury, while he is not at liberty to act from motives merely of compassion or charity, may consider not only the pecuniary interests of the Government, but take into view general considerations of justice and equity and of public policy. 17 Op. 213.

**45. Compromise of suit for taxes illegally collected.**—The Secretary of the Treasury has no power to compromise a suit brought against a collector of internal revenue for the recovery of taxes claimed to have been illegally collected. 23 Op. 507.

**46. Same—What suits he may compromise.**—The power given the Secretary by section 3229, Revised Statutes, to compromise cases arising under the internal-revenue laws, extends only to suits commenced by the Government to recover taxes; while the ampler power of compromise given him by section 3469, Revised Statutes, is limited to claims in favor of the United States. *Ib.*

**47. Same—What suits the Attorney-General may compromise.**—Except as modified by the statutes herein cited, the power to determine whether a compromise should be made of pending litigation would seem to rest with

the Attorney-General, such suits being necessarily under his control and subject to his direction. *Ib.*

**48. The Secretary of the Treasury has power under section 3469, Revised Statutes, to compromise a judgment rendered in the name of the United States for damages and penalties incurred under sections 3490-3493, Revised Statutes, notwithstanding the fact that the prosecution was instituted and prosecuted to final judgment by an individual who thereby acquired an interest in the judgment.** (*See United States v. Morris*, 10 Wheat, 246.) 18 Op. 72.

**49. Compromise.**—The Secretary of the Treasury is not authorized by section 3469, Revised Statutes, to remit or release any portion of a judgment indebtedness on considerations of hardship to particular individuals. The authority to "compromise" relates to claims of doubtful recovery or enforcement. (13 Op. 479, and 18 Op. 72, distinguished.) 21 Op. 50.

**50. The Secretary of the Treasury has no power to compromise or release a judgment in favor of the United States from which there is no appeal and of whose collectibility in full there is no doubt.** Opinion of July 11, 1894 (21 Op. 50), reaffirmed. 21 Op. 264.

**51. Compromise of collectible judgment.**—The Secretary of the Treasury has no power, under section 3469, Revised Statutes, to compromise a final judgment in favor of the United States which is clearly collectible. That section only authorizes a compromise of a claim which is in some way doubtful. 23 Op. 18.

**52. Compromise of claim reduced to judgment and collectible.**—While the Secretary of the Treasury has no authority under section 3469, Revised Statutes, to compromise a claim in favor of the United States which has been reduced to judgment, affirmed by the highest court, and which is clearly collectible, that section confers upon him the authority to compromise all other claims in favor of the United States, except those arising under the postal laws. 23 Op. 631.

**53. Same—Disputed questions of law and fact.**—The claim of the United States against the North American Company for interest, involving disputed questions of law and fact, is clearly one subject to compromise. *Ib.*



**54. Compromise of judgment—Contract Labor Law.**—It is doubtful if the power given to the Secretary of the Treasury by section 3469, Revised Statutes, to compromise "any claim" extends to a judgment recovered by the United States against a corporation in a suit for a penalty for violation of the contract labor law of February 26, 1885 (23 Stat. 332). 19 Op. 344.

**55. Same.**—Neither section 2 of the act of March 3, 1891 (26 Stat. 1084), nor any other previous law referred to in that section, authorizes the Secretary of the Treasury, or any one, to settle or compromise judgments entered under section 3 of the contract-labor act of February 26, 1885 (23 Stat. 333). (19 Op. 345 adhered to.) 20 Op. 530.

**56. Compromise.**—Claims in favor of the Government, founded on judgments entered upon forfeited recognizances taken in the prosecution of offenses against the postal laws, may be compromised by the Secretary of the Treasury under the provisions and upon the considerations imposed by section 3496, Revised Statutes. 18 Op. 277.

**57.** Such claims do not arise under the postal laws, within the meaning of the exception in that section. *Ib.*

**58. The power to compromise claims in favor of the United States which includes judgments on recognizances is vested by law in the Secretary of the Treasury with respect to all claims save those arising under the postal laws.** 21 Op. 494.

*See also* INTERNAL REVENUE, II, b; CUSTOMS LAW, IX, g; CLAIMS, V; and IMMIGRATION, 36.

**59. Payment.**—The Secretary has no discretion to pass upon the question whether the amount appropriated by the act of July 1, 1898 (30 Stat. 613), for the payment to a certain individual, or any portion thereof, ought to be paid. The provision is mandatory. 22 Op. 295.

**60. Payment—Burial expenses of deceased pensioner.**—The Secretary of the Treasury is authorized by the act of March 2, 1895 (28 Stat. 964), to pay from the accrued pension of a deceased pensioner, of such sum as may be necessary to reimburse a municipal corporation for the expenses it incurred during the last sickness and for the burial of a deceased pensioner who died not leaving suffi-

cient assets to meet such expenses. 23 Op. 428.

**61. Payment—Assignment—French spoliation claims.**—It is the duty of the Secretary of the Treasury under the act of March 3, 1899 (30 Stat. 1191), making appropriation for the payment of certain French spoliation claims, to determine before payment whether or not these claims are "held by assignment or owned by any insurance company." That duty is not altered by reason of the receipt of certificates of the Court of Claims issued under the authority of that act. 23 Op. 179.

PAYMENTS IN REGARD TO WORLD'S COLUMBIAN EXPOSITION. *See* EXPOSITIONS AND FAIRS, I.

*See also* TREASURY DEPARTMENT, II, h.

**62. Accounts—Settlement.**—The Secretary of the Treasury can not legally, by departmental order, change a practice or course of office procedure prescribed by statute for the settlement of accounts. 19 Op. 176.

**63. Pay accounts—Oath of officers of Revenue-Marine Service.**—The Secretary of the Treasury has power, under section 161, Revised Statutes, to make a regulation which prescribes that the oaths to be taken by an officer of the Revenue-Marine Service, or an officer or employe in any branch of the customs service, to the correctness of his account for pay or salary, as required by sections 1790 and 2693, Revised Statutes, shall be taken before some person authorized to administer oaths generally. 19 Op. 401.

**64.** The fee paid by the officer or employe in such case for administering the oath does not constitute a proper charge against the United States, and if charged in his account should not be allowed in the settlement thereof. *Ib.*

**65. Balances due on postal accounts.**—Section 12 of the Dockery Act of July 31, 1894 (28 Stat. 162, 209), does not require the Secretary of the Treasury to report to Congress annually the balances due on postal accounts for the prior fiscal year. 21 Op. 296.

**66. Warrants.**—The First Comptroller has no revisory power over the decisions of the Secretary of the Treasury respecting the issuance of warrants; such decisions are binding upon the former officer. 17 Op. 233.

**67. Warrants.**—The Secretary of the Treasury may recall his action in delivering a warrant

to an attorney not entitled under the law to receive it, and may take necessary measures, by issuing a new warrant or otherwise, to pay the money involved to the party for whom it was appropriated by Congress. 25 Op. 279.

68. The Secretary of the Treasury is empowered by the act of August 3, 1882 (22 Stat. 214), to employ counsel for the purpose of advising and defending boards of immigration and pay for such services out of the immigrant fund. 18 Op. 108.

69. As a recourse to law on the part of the Secretary of the Treasury for the settlement and collection of certain bonds made and issued by certain States and owned by the United States would involve the very grave act of suing States, and as Congress has had this question repeatedly before it and has not directed such a course, the Secretary of the Treasury should not institute any suit. 21 Op. 478.

70. Disposition of Spanish war vessels wrecked in battle off the coast of Cuba.—The Spanish vessels wrecked in battle by the naval vessels of the United States during the war with Spain, and now lying along the coast of Cuba, are the property of the United States, and the Secretary of the Treasury has power, under section 3755, Revised Statutes, to make such provision for their sale or other disposition as he may deem necessary. 23 Op. 76.

71. Internal-revenue regulations. — The Secretary of the Treasury has power to make a regulation under which distilled spirits may be permitted to remain in warehouse after the expiration of three years, upon the distiller or owner of the spirits filing a declaration of his purpose to export the same in good faith, and giving a bond to do so within a given period. 18 Op. 92.

72. Internal revenue.—The Secretary of the Treasury has the authority under section 3221, Revised Statutes, to abate the tax on whiskey which was accidentally destroyed by fire in a distillery warehouse without any fraud, collusion, or negligence of the distillers and while the same remained under the custody of an internal-revenue officer, a portion of which whiskey had been in warehouse beyond the bonded period of three years. 18 Op. 379.

73. Counterfeit coin—Forfeiture—Return of bullion therein contained.—Section 4 of the act of February 10, 1891 (26 Stat. 742), which

authorizes the Secretary of the Treasury to seize and forfeit all counterfeits of the coin of the United States, does not authorize the Secretary to return the counterfeit, or the value of the bullion it contained to the person from whom such coin was taken. 23 Op. 458.

74. Same.—Under that section the Treasury Department has authority to seize counterfeit coin, to decide that it is counterfeit, to determine that it was unlawfully in possession of the party from whom taken, and to forfeit it; and, after forfeiture, to direct in what manner it shall be disposed of. No judicial condemnation is necessary. *Ib.*

75. Pictures of coins.—The Secretary of the Treasury is not authorized by law to seize pictures of coins. 20 Op. 210.

76. Silver certificates.—The Secretary of the Treasury has authority under section 3 of the act of July 14, 1890 (26 Stat. 289), and section 3 of the act of February 28, 1878 (20 Stat. 25), to issue silver certificates in exchange for all standard silver dollars which have been properly coined and put into circulation and are offered at the Treasury for exchange in sums not less than \$10, whether such silver represents profit or seigniorage is immaterial. 20 Op. 124.

77. Regulations in regard to requests upon National Bureau of Standards.—The Secretary of the Treasury is authorized under sections 3 and 9 of the act of March 3, 1901 (31 Stat. 1449), to provide by regulation what officer or officers of "State governments" shall be recognized by the National Bureau of Standards in requests made upon it for the services specified in that act. 24 Op. 667.

78. Rulings or decisions—Reversal or modification of.—Section 2 of the act of March 3, 1875 (18 Stat. 469), in regard to the reversal or modification adversely to the United States of a ruling or decision of the Secretary of the Treasury, by the same or a subsequent Secretary, is in force and its provisions must, of course, be obeyed. 25 Op. 81.

79. Reference of matter of disallowance to Court of Claims.—Where, upon an appeal to the Comptroller of the Treasury from certain disallowances made by the Auditor for the War Department in the settlement of the accounts of a disbursing officer of the Army, the Comptroller is unable, because of disputed questions of fact, to determine the question

presented, and certifies such fact to the Secretary of the Treasury, the latter officer has no authority, under section 1063, Revised Statutes, to direct that the matter be referred to the Court of Claims for trial and adjudication, it not being a claim within the meaning of that section. 24 Op. 545.

**80. Sea otter.**—A limitation by the Secretary of the Treasury of the right to kill sea otter within a certain area to a certain race or class of people would be granting a special privilege and would violate section 1956 of the Revised Statutes. 21 Op. 333.

**81. Sea-otter hunting vessels.**—The Secretary of the Treasury is authorized under section 1956, Revised Statutes, as amended by section 3 of the act of March 2, 1889 (25 Stat. 1009), to instruct captains of the fur-seal patrol fleet to seize all foreign vessels found hunting, or to have hunted, sea otter within the Territory of Alaska and the waters thereof and in all the dominion of the United States in the waters of Bering Sea. 21 Op. 346.

**82. Boarding of vessels.**—The execution of the act of March 31, 1900 (31 Stat. 58), entitled "An act concerning the boarding of vessels," has been transferred by section 10 of the act of February 14, 1903 (32 Stat. 825), from the Secretary of the Treasury to the Secretary of Commerce and Labor. 25 Op. 51.

**83. United States shipping commissioners.**—The duty of assigning suitable offices and rooms in public buildings for the use of United States shipping commissioners, imposed upon the Secretary of the Treasury by the act of March 3, 1897 (29 Stat. 687), was not affected by the act of February 14, 1903 (32 Stat. 825), establishing the Department of Commerce and Labor. 25 Op. 117.

**84.** The Secretary of the Treasury has no authority to make distribution of the diplomas and medals directly to the exhibitors of the World's Columbian Exposition. 21 Op. 216.

Authority and duty of the Secretary in the following matters:

ACCOUNTS, RENDITION OF, BY OFFICERS RECEIVING ADVANCES OF PUBLIC MONEYS. *See* TREASURY DEPARTMENT, II, h.

APPOINTMENT OF AGENTS FOR DISBURSEMENT OF PUBLIC BUILDINGS APPROPRIATIONS. *See* PUBLIC BUILDINGS, 26–37.

ACCEPTANCE OF PUBLIC BUILDINGS. *See* PUBLIC BUILDINGS, 18.

CANNED AND CHOPPED MEATS, EXCLUSION OF. *See* FOOD PRODUCTS, 9.

CLAIM OF PENNSYLVANIA, AUTHORITY TO RE-EXAMINE AND AUDIT. *See* CLAIMS, 44, 45.

COMPENSATION OF UNITED STATES ATTORNEYS. *See* UNITED STATES ATTORNEYS.

CONTRACTS, POWER TO MODIFY. *See* CONTRACTS, III, d.

COPYRIGHT MATTERS. *See* COPYRIGHT, 10.

CUSTOMS MATTERS. *See* CUSTOMS LAW, II, a; AND OTHER APPROPRIATE HEADINGS UNDER CUSTOMS LAW.

DIRECT TAXES REFUND. *See* DIRECT TAXES.

ELLIS ISLAND CONTRACTS AND LICENSES. *See* ELLIS ISLAND.

EXCHANGE OF GOLD BARS FOR GOLD COIN. *See* TREASURY DEPARTMENT, 172.

IMMIGRATION. *See* IMMIGRATION.

LICENSES OR LEASES FOR TEMPORARY OCCUPANCY OF PUBLIC PARKS AND RESERVATIONS. *See* LICENSES.

LIFE-SAVING MEDALS. *See* LIFE SAVING.

MEDALS OF HONOR. *See* LIFE SAVING.

PAYMENT OF STRONG AWARD. *See* DISTRICT OF COLUMBIA, IX.

PAYMENTS IN REGARD TO THE WORLD'S FAIR. *See* EXPOSITIONS AND FAIRS, I.

PUBLIC BUILDINGS. *See* PUBLIC BUILDINGS.

PURCHASE OF UNITED STATES BONDS. *See* TREASURY DEPARTMENT, VI.

QUARANTINE REGULATIONS. *See* HEALTH AND QUARANTINE, 4, 6, 8.

REINVESTMENT OF SINKING FUND, UNION AND CENTRAL PACIFIC RAILROAD COMPANIES. *See* RAILROADS, II, c.

REGISTRY OF VESSELS. *See* SHIPPING, I, c.

REFUND. *See* CUSTOMS LAW, VI, a; and SHIPPING, 77.

SEAL FISHERIES, LEASES, ETC. *See* SEAL FISHERIES.

REMISSION OF FINES, PENALTIES, AND FORFEITURES—

IN CUSTOMS MATTERS. *See* CUSTOMS LAW, IX, g. TREASURY DEPARTMENT, 34–43.

IN IMMIGRATION MATTERS. *See* IMMIGRATION, VI.

b. *Treasurer of the United States.*

**85. Philippine land-purchase bonds.**—There is no legal objection to the Treasurer of the United States receiving the principal and interest of the Philippine land-purchase bonds from the Philippine government, and dis-

tributing the same to the holders of the securities, nor to the Register of the Treasury of the United States registering and recording said bonds, provided the officers in question are willing and the Secretary of the Treasury consents and approves; but there is no specific provision of law authorizing the performance of such services. 25 Op. 98.

*See also CUSTOMS LAW, 58.*

*c. Assistant Treasurer.*

**86. The form of the bond required to be given by Assistant Treasurers of the United States under section 3600, Revised Statutes, whether the parties thereto are to be jointly and severally, or may be only jointly bound, and whether each surety is to bind himself for the full amount of the penalty, or may restrict his liability to a less amount, is not made the subject of statutory regulation, but is left to the determination of the officers by whom the bond is to be approved. 18 Op. 274.**

**87. Same.**—But the form ordinarily made use of in practice is that wherein the principal and sureties are jointly and severally bound for the full amount of the penalty. *Ib.*

**88. Same.**—This form being preferable to any other, and its use sanctioned by long practice, the adoption of a different form (though it might not be inconsistent with the terms of the statute so to do) would not be warranted unless the circumstances of the particular case were such that the public interests could not otherwise be served. *Ib.*

**89. Holding over—Qualification of successor.**—An Assistant Treasurer of the United States may lawfully continue to perform the duties of his office after the expiration of his term of four years, and until the qualification of his successor, Congress having expressly provided in the acts of March 2, 1895 (28 Stat. 808, 844), for the continuance in office of all officers of the Treasury Department under similar conditions. 25 Op. 636.

**90. Same.**—The sureties on the bond of an Assistant Treasurer continue liable for his acts while continuing in office after the expiration of his term and until the qualification of his successor. *Ib.*

**91. Same.**—The Secretary of the Treasury may defer the qualification of an Assistant Treasurer until a proper count can be made of the funds in the subtreasury under a predecessor,

in accordance with the custom of the Treasury Department. *Ib.*

*d. Director of the Mint.*

**92. Purchase of bullion for subsidiary coinage.**—The Director of the Mint is authorized, with the approval of the Secretary of the Treasury, to purchase bullion for subsidiary coinage, and this authority, under the act of March 3, 1903 (32 Stat. 1109), is without limitation, express or implied. 25 Op. 170.

**93. The provisions of section 3510, Revised Statutes, do not authorize the Director of the Mint, with the approval of the Secretary of the Treasury, to accept and pay for new designs for existing coins. His authority thereunder, as regards the preparation of original dies, is limited to those intended for new coins. 19 Op. 16.**

*e. Comptroller of the Currency.*

**94. Organization of national banks in Hawaii.**—The Comptroller of the Currency is authorized to grant permission for the organization of national banks in Hawaii. 23 Op. 177.

**95. Dividend paid to creditors of a national bank.**—It is not within the province of the Comptroller of the Currency to inquire into the use the creditors of a national bank propose to make of the dividend paid them. 20 Op. 269.

*f. Comptroller of the Treasury.*

**96. The First Comptroller has no revisory power over the decisions of the Secretary of the Treasury respecting the issuance of warrants; such decisions are binding upon the former officer. 17 Op. 233.**

**97. Power of First Comptroller to direct action by Commissioner of the General Land Office.**—The First Comptroller has no power to direct the Commissioner of the General Land Office forthwith to audit any particular account relating to the public lands, where in his opinion further delay would be injurious to the Government. 18 Op. 450.

**98. Same.**—The Commissioner, with respect to the discharge of his duties in such matters is subject only to the direction of the Secretary of the Interior. *Ib.*

99. **The First and Second Comptrollers and the Commissioner of Customs have no legal status as advisers of the Secretary of the Treasury upon legal questions.** In form the Comptroller is asked for legal advice; in fact, what is desired is information as to his future action. Their opinions on points of law not anticipatory of future decisions by themselves are purely extra official and rendered by courtesy only. 20 Op. 654.

100. The provisions of the act of March 2, 1895 (28 Stat. 776, 777), with reference to the positions of law clerk in the offices of the Comptroller of the Treasury and of the Auditors of the Treasury, are not to be construed as subjecting those positions to competitive examinations. That statute leaves the mode of their appointment as fixed by the act of July 31, 1894 (28 Stat. 173). 21 Op. 187.

101. The Comptroller of the Treasury is not an "agent" within the meaning of section 3469, Revised Statutes. 21 Op. 361.

102. **Same.**—The "agent" referred to in that section is one who has special charge of a claim for the purposes of collection or enforcement, in the same way that the district or special attorney has, though he need not possess their professional character. *Ib.*

103. Questions with reference to the manner of drawing funds from the Treasury, and the administrative examination of the accounts of the officer disbursing them, is one which should be submitted to the Comptroller of the Treasury under section 8 of the act of July 31, 1894 (28 Stat. 208). 22 Op. 414.

104. **Appropriation.**—The question as to what appropriation the expense of printing the 760 copies of private laws in slip form, authorized by section 56 of the act of January 12, 1895 (28 Stat. 609), is to be charged, is one which may be asked of the Comptroller of the Treasury, and should not be answered by the Attorney-General. 21 Op. 405.

105. **Appropriation.**—The question whether or not the Secretary of the Treasury is authorized by the appropriation act for the fiscal year 1896 to purchase newspapers and other articles for use outside of Washington, in view of sections 192 and 3683, Revised Statutes, belongs to a class of questions which should, except in matters of great importance, be submitted to the Comptroller of the Treasury, under section 8 of the act of July 31, 1894 (28 Stat. 207). 21 Op. 178.

106. **Payment, questions involving.**—Section 8 of the appropriation act of July 31, 1894 (28 Stat. 207), makes it obligatory upon the Comptroller of the Treasury to render a decision upon any question involving a payment to be made by or under the head of any Executive Department, and contemplates the construction by him of statutes. 21 Op. 181.

Opinion of May 22, 1895 (21 Op. 178), reaffirmed. *Ib.*

107. **Payment.**—The question as to the right to refund certain duties claimed to have been collected through mistake of law should be asked of the Comptroller of the Treasury. 21 Op. 188.

108. **Payment.**—Whether certain expenses of the Department of Agriculture are payable from a certain appropriation for that Department is a question which should have been addressed to the Comptroller of the Treasury. 21 Op. 221.

109. **Payment.**—The Comptroller of the Treasury is charged with the duty of rendering decisions upon questions involving payments to be made by or under the head of an Executive Department, and his decision is final as to all executive officers. 23 Op. 468.

110. **Payment.**—The question as to whether the expense of preparing blank forms and furnishing them to collectors can be paid out of the appropriation for defraying the expenses for collecting the revenue from customs, is peculiarly one for the Comptroller of the Treasury to decide (23 Op., 468). 25 Op. 50.

111. **Payments.**—The question of the legality of a payment presented to the Treasury Department is one exclusively for the Comptroller, whose decision thereon is final as to all executive officers. 21 Op. 530.

112. **Payment.**—The decision of the Comptroller of the Treasury upon any question involving a payment is final and binding. 22 Op. 581.

113. **Payment—Refund.**—The Comptroller of the Treasury, rather than the Attorney-General, should pass upon the question of the power of refund and payment out of the Treasury of duty overpaid on an importation of merchandise. 24 Op. 553.

114. **Payment—Attorney-General's opinion.**—An opinion relating to refund of duties, which could have been asked of the Comptroller of the Treasury, is, notwithstanding, given by the Attorney-General, it appearing

that the question is one of importance, and the Comptroller joins in requesting it. 21 Op. 224.

115. *Same.*—An important question as to refund, submitted at the request of the Comptroller of the Treasury, is answered by the Attorney-General. 21 Op. 402.

116. *Same.*—Except in matters of great importance, the Attorney-General will not express an opinion upon any question involving a payment to be made by or under the head of an Executive Department. That duty, by the act of July 31, 1894 (28 Stat. 208), is imposed upon the Comptroller of the Treasury, whose opinion is binding and conclusive. 23 Op. 1.

117. *Same.*—The Attorney-General will not render an opinion upon questions which involve the payment of money by the Treasury Department. That duty, by section 8 of the act of July 31, 1894 (28 Stat. 208), is imposed upon the Comptroller of the Treasury. 23 Op. 431.

*See also*, to same effect, 21 Op. 179, 183; 23 Op. 2, 86, 468, 586.

118. *Payment.*—The authority conferred upon the Comptroller of the Treasury by section 8 of the act of July 31, 1894 (28 Stat. 208), to decide questions involving payments to be made from the Treasury is complete; but that act does not establish a rule which is universal and without exception. Congress did not, by that enactment, intend to shorten the reach of sections 354 and 356, Revised Statutes, or to repeal *pro tanto* those sections. 25 Op. 301.

119. *Same.*—Where a question is presented to the Attorney-General in accordance with law for decision, and he is of opinion that the nature of the question is general and important in other respects than disbursement, and therefore conceives that it is proper for him to deliver his opinion, it is final and authoritative under the law and should be so treated by the accounting officers of the Treasury, even though the question involves a payment to be made from the Treasury. *Ib.*

120. *Same.*—When the Comptroller of the Treasury waives his right to determine a matter involving disbursements within the scope of his authority under the law, and requests or suggests a ruling by the Attorney-General, the Attorney-General's opinion should be controlling upon the accounting officers of

the Treasury and should be followed by them unless contrary to some authoritative judicial decision. *Ib.*

#### *g. Auditors.*

121. The Auditors of the Treasury are agents of the Government in the broad sense of the term, but are more properly called officers, and were not intended to be included within the meaning of the word "agent" in section 3469, Revised Statutes. 21 Op. 367.

122. *Third Auditor—Claims.*—The act of March 3, 1849 (9 Stat. 415), placed all claims presented under it within the exclusive jurisdiction of the Third Auditor. It made him the sole tribunal and his awards, called judgments, final. 17 Op. 352.

123. *Same.*—The award made by the Third Auditor on the 10th of May, 1861, under that law, in favor of James and Richard H. Porter, was binding upon all officers of the Government. *Ib.*

124. *Same.*—The act of July 28, 1866 (14 Stat. 327), modifying said act of 1849, did not affect claims adjudicated by the Auditor before its passage. *Ib.*

125. *Sixth Auditor.*—The accounts which the Sixth Auditor is required to audit under section 277, Revised Statutes, etc., are of a fiduciary character, dependent upon the discretion of the Postmaster-General under authority of law, and generally refer to the postal service. 19 Op. 30.

126. *Sixth Auditor.*—The Auditor of the Treasury for the Post-Office Department is an officer of the Treasury Department and accounts of postmasters in his custody are to be regarded as in the Treasury Department within the meaning of section 1076, Revised Statutes. 20 Op. 677.

History of the Auditor's office since 1789 reviewed. *Ib.*

#### *h. Accounting Officers and Accounting.*

127. *Accounts—Rendition.*—The first clause of section 3622, Revised Statutes, which requires officers and agents of the United States to render accounts monthly, is applicable to every officer who receives advances of public money to be disbursed, and also to every officer who collects and receives fees and revenues which it is his duty to account for. 19 Op. 557.

**128. Same.**—This requirement is not subject to the direction of the Secretary of the Treasury, excepting in extraordinary cases, where he shall be of opinion that the statutory period ought to be enlarged to meet the special circumstances of such cases. Opinion of Attorney-General Devens of December 2, 1878 (16 Op. 222), concurred in. *Ib.*

**129. Accounts—Settlement.**—The Secretary of the Treasury can not legally, by departmental order, change a practice or course of office procedure prescribed by statute for the settlement of accounts. 19 Op. 177.

*See also* 63.

**130. Accounts settled between an army officer and the accounting officers.**—The settlements between Col. Wager Swayne and the accounting officers in the matter of his pay as a major-general of volunteers are conclusive upon the Executive Department of the Government, and can not be reopened by setting against his percentage increase so much of said pay as represents the excess of what he should have received as colonel. 17 Op. 448.

**131. Accounts of paymaster—Credit for payment of retained pay of soldiers.**—The accounting officers of the Treasury should allow a paymaster of the Army credit for payment made by him to a soldier of his retained pay under section 1281, Revised Statutes, where the latter has received an honorable discharge, although it may appear that after enlisting the soldier deserted, but was restored to duty without trial and served out the full term of his enlistment. 19 Op. 567.

**132. Accounts.**—The power to audit and adjust accounts for the last sickness and burial of deceased pensioners arising under section 4718, Revised Statutes, belongs solely to the proper accounting officer of the Treasury by virtue of section 236, Revised Statutes. 17 Op. 440.

Opinion of April 28, 1882 (17 Op. 339), distinguished. *Ib.*

**133. Appropriations.**—The allotment of the Public Printer's appropriation among the different departments is not actually passed upon by the accounting officers of the Treasury and is not within their jurisdiction. 21 Op. 423.

**134. Payment for army transportation.**—An army quartermaster may lawfully pay the accounts of land-grant railroads for army transportation without previous action thereon

by the accounting officers of the Treasury. 19 Op. 264.

**135.** In the case of a claim under the act of March 3, 1885 (23 Stat. 350), for property lost in the military service, the question whether the loss happened under the circumstances described in the statute, and comes within the provisions thereof, is one for the determination of the proper accounting officers of the Treasury, and so does not appertain to the administration of the War Department. 19 Op. 694.

**136.** The claim of the State of Massachusetts for reimbursement of expenses incurred in the payment of State militia called out by the governor, at the request of the military authorities of the United States, to aid in suppressing the "draft riots" in the city of Boston is within the scope of the act of July 27, 1861 (12 Stat. 276), and the supplemental resolution of March 8, 1862, No. 16 (12 Stat. 615), providing for the indemnification of States for expenses incurred in the defense of the United States, and may properly be examined and adjusted by the accounting officers of the Treasury under the provisions thereof. 19 Op. 537.

**137. Payment of claim authorized by statute.**—The provision in the act of March 2, 1889 (25 Stat. 921), for payment to the State of Kansas of \$43,790.32 on account of 5 per centum fund arising from the sale of public lands in said State, precludes all inquiry on the part of the accounting officers of the Treasury as to the legality and justness of the claim. It is their duty to allow and certify the claim for that amount, "as per decision of the First Comptroller of the Treasury of date May 6, 1880, and as stated by the Commissioner of the General Land Office." 19 Op. 362.

**138. Pension agents—Payments made by.**—The accounting officers of the Treasury have no power to disallow payments made by pension agents pursuant to an order made and within the jurisdiction of the Commissioner of Pensions. 19 Op. 214.

**139. Same.**—It is not within their province, upon learning of any order made by the Commissioner of Pensions to a pension agent for the payment of pensions, to notify such agent of what their decision will be upon his account when rendered. *Ib.*

**140. Pension laws—Construction.**—It is not within the province of the accounting officers

of the Treasury to construe the pension laws and give instructions to pension agents as to the payment of pensions. This properly belongs to the Commissioner of Pensions, whose duty it is, under the direction of the Secretary of the Interior, to administer these laws. 17 Op. 339.

**141. Pension appropriations.**—The Treasury Department is bound by the rulings of the Department of the Interior in construing pension appropriation acts. 20 Op. 178.

*i. Disbursing Officers.*

**142. A disbursing officer of the United States** holding a Treasury draft payable to the order of certain contractors can not with propriety or safety be directed to turn it over to a receiver appointed by a State court in an action between contesting claimants. 21 Op. 75.

For agents for the disbursement of public building appropriations, *see* PUBLIC BUILDINGS, 26-37.

*j. Solicitor of the Treasury.*

**143. Status—Opinion.**—The Solicitor of the Treasury is an adviser recognized by law and his opinion may be asked by the Secretary of the Treasury upon any question of pure law or of mixed law and fact arising in the Treasury Department, except questions involving the construction of the Constitution of the United States. His opinions have, however, no binding force. 20 Op. 654.

**144. Questions purely of law actually arising** in the administration of the Treasury Department, and requiring the personal consideration of the Secretary, may be referred to the Solicitor of the Treasury or to the Attorney-General. If referred to the latter, however, his answer should be regarded by the Department as law until withdrawn by him or overruled by the courts. *Ib.*

**145. Examination and approval of proposed rules and regulations.**—The Solicitor of the Treasury is empowered to examine and advise the Secretary of the Treasury in regard to proposed codes of rules or forms of applications, permits, bonds, etc., to be adopted by the Treasury Department as such matters come up for consideration. 20 Op. 788.

As to his relations as an officer of the Department of Justice. *See* DEPARTMENT OF JUSTICE, II.

*k. Customs Officers.*

**146. The general appraisers appointed under** the provisions of the act of June 10, 1890, are officers of the Treasury Department. 21 Op. 85.

**147. Same.**—If inefficiency, neglect of duty, or malfeasance in office is charged against one of them, it is the duty of the Secretary of the Treasury to investigate the matter. *Ib.*

**148. The Commissioner of Customs and the Comptroller** have no legal status as advisers of the Secretary of the Treasury upon legal questions. Their opinions on points of law not anticipatory of future decisions by themselves are purely extra official and rendered by courtesy only. 20 Op. 654.

COLLECTORS OF CUSTOMS. *See* CUSTOMS LAW, II, b.

**III. Bureaus.**

**149. National Bureau of Standards—Services to State institutions.**—Under section 8 of the act of March 3, 1901 (31 Stat. 1449), each State may properly demand and receive from the National Bureau of Standards all comparisons, calibrations, tests, or investigations, free of charge, which are necessary or essential for a State government in performing its lawful functions. 24 Op. 667.

**150. Same.**—State institutions may also call upon and receive from that Bureau, free of charge, such services, specified in section 8 of the above-named act, as State governments would be entitled to have performed. *Ib.*

**151. Same.**—The Secretary of the Treasury is authorized under sections 3 and 9 of said act, to provide by regulation what officer or officers of "State governments" shall be recognized by the Bureau in requests made upon it for the services specified in the act. *Ib.*

BUREAU OF ENGRAVING AND PRINTING. *See* PUBLIC PRINTING, III.

**IV. Regulations, Circulars, etc.**

**152. Customs regulations.**—Article 309 of the Customs Regulations of 1892, providing



"\* \* \* Nor can liens be recognized for freight on merchandise intended for export," is inconsistent with section 2981, Revised Statutes, as amended. 21 Op. 38.

**153. Customs—Ruling—Cows are household effects.**—The Attorney-General recommends that the ruling heretofore adopted by the Treasury Department that cows are not "household effects," be changed to hold that they are such effects. 23 Op. 310.

**154. Chinese laborers, readmission of—Opinion—Attorney-General.**—The question of the validity of a proposed regulation of the Treasury Department providing that in case a Chinese laborer who has left the United States upon a valid return certificate is delayed beyond one year from the date of his departure by reason of sickness or other disability beyond his control, the consular representative of the United States shall certify to such facts before the Chinaman shall be admitted into this country, not being a question actually or presently arising in the administration of the Treasury Department, the Attorney-General declines to express his opinion thereon. 23 Op. 582.

**155. Same.**—Should this proposed regulation be promulgated, and the question of its validity arise in that Department, as upon an appeal under the act of August 18, 1894 (28 Stat. 390), the right and duty of the Attorney-General to reply to the question would be untrammelled. *Id.*

**156. Chinese Laborers—Treasury Department Circular No. 52.**—Circular No. 52, Bureau of Immigration, Treasury Department, issued May 10, 1902, providing that duly registered Chinese laborers seeking admission to the United States after temporary absence, under Article II of the treaty of 1894 between the United States and China, must prove that some one of the conditions mentioned in that article exists at the time of application for readmission, is warranted both by the treaty with China and by the existing laws of the United States. 24 Op. 91.

**157. Immigration—Liability of steamship companies.**—Certain steamship companies disputed the validity of the Treasury Department's regulations, holding them liable under the immigration act of March 3, 1891 (26 Stat. 1084), for the maintenance and transportation to the seaboard of certain alien immigrants who had reached the interior of the country. *Held,*

that as there was no way of enforcing the statute against the steamship companies except through the courts, the question is not one arising in the administration of that Department, the Attorney-General can not properly express his opinion thereon. 21 Op. 6.

**158. Circular to passengers.**—The provisions of a "Circular to Passengers" proposed to be issued by the Secretary of the Treasury regarding the right of residents of the United States returning from foreign countries to bring with them free of duty articles purchased abroad, and not intended for sale, of a total value not exceeding \$100, etc., are in harmony with paragraph 697 of the tariff act of July 24, 1897 (30 Stat. 202), and legal. 25 Op. 93.

**159. Same.**—The Attorney-General declines to express an opinion as to the propriety of a proposed instruction to customs officials to inquire into the bona fides of the journey and the ownership of goods imported in such cases, as he is not authorized to express his views upon matters of propriety involving executive judgment and discretion; neither may he express an opinion as to whether the above provision can be enforced on proof that the object of the journey was to purchase goods, as the latter is a hypothetical as well as a judicial question. The legality of such an instruction, however, can not be seriously questioned. 25 Op. 94.

**160. In quarantine regulations against yellow fever promulgated by the Secretary of the Treasury an exemption from disinfection, etc., of vessels bound to ports in the United States north of the southern boundary of Maryland does not constitute a discrimination within the meaning of the act of February 15, 1893 (27 Stat. 449), providing that regulations shall operate uniformly and in no manner discriminate against any port or place.** 21 Op. 446.

**161. Registration of foreign-built vessels.**—The Secretary of the Treasury has the undoubted right to change the regulation and practice of the Department and adopt a more liberal construction of the clause "wrecked in the United States," found in section 4136, Revised Statutes. 21 Op. 199.

**162. Smelters and refiners—Lead bullion—Assay.**—The application of assay to lead bullion under the current Treasury regulations

for bonded smelters and refiners is without warrant of law. 24 Op. 45.

Same.—Reaffirmed. 24 Op. 569.

#### V. Treasury Certificates, Currency, Coinage, etc.

163. Silver certificates are not lawful money within the meaning of section 4 of the act of June 20, 1874 (18 Stat. 124), and section 9 of the act of July 12, 1882 (22 Stat. 164). 20 Op. 725.

164. The Treasury notes authorized to be issued in payment for silver bullion by the act of July 14, 1890 (26 Stat. 289), are not United States notes within the meaning of the act of June 8, 1872 (17 Stat. 336), and consequently are not receivable on deposit in exchange for the currency certificates authorized by that act. 20 Op. 317.

165. Treasury notes, of the character authorized by the act of July 14, 1890 (26 Stat. 289), directing the purchase of silver bullion and the issue of Treasury notes thereon to the amount necessary for such purchase, may not be issued on the gain or seigniorage arising from the coinage provided for in that act and paid into the Treasury. 20 Op. 124.

166. The Secretary of the Treasury has authority under section of the above-named act, and section 3 of the act of February 28, 1878 (20 Stat. 25), to issue silver certificates in exchange for all standard silver dollars which have been properly coined and put into circulation and are offered at the Treasury for exchange in sums not less than \$10. Whether such silver represents profit or seigniorage is immaterial. *Ib.*

167. Trade dollar.—The United States Treasurer is not authorized to receive "trade dollars" at par in exchange for silver certificates under the third section of the act of February 28, 1878 (20 Stat. 25). Nor are such dollars receivable at par in payment of public dues. 18 Op. 417.

168. Coin, deposit of, for redemption of circulation.—A national banking association may, under section 3 of the act of June 20, 1874 (18 Stat. 123), deposit coin in the Treasury for the redemption of its circulation. 17 Op. 144.

169. Same.—The Treasury, while privileged under sections 3 and 4 of that act to redeem

such circulation in United States notes, has also the right to redeem the same circulation in coin. *Ib.*

170. Same.—The act of 1874 was not intended to repeal or affect the general provisions of law making the coins of the United States a legal tender in all payments (sec. 3585 et seq., Rev. Stats.). *Ib.*

171. Exchange of gold bars for gold coins.—The words "are hereby authorized," in the act of May 26, 1882 (22 Stat. 97), providing for the exchange of gold bars for gold coin by the superintendents of the coinage mints and of the assay office at New York, are to be construed as mandatory upon those officers. 19 Op. 575.

172. Same.—It is not discretionary with the Secretary of the Treasury to refuse such exchange, nor can he lawfully direct those officers so to do. *Ib.*

173. Same.—A charge for the preparation of the bars can not be exacted on an exchange thereof for coin under said act. *Ib.*

Reaffirmed. 19 Op. 594.

174. Coins of the United States—Designs.—The provisions of section 3510, Revised Statutes, do not authorize the Director of the Mint, with the approval of the Secretary of the Treasury, to accept and pay for new designs for existing coins. His authority thereunder, as regards the preparation of original dies, is limited to those intended for new coins. 19 Op. 16.

175. Subsidiary coinage.—The Director of the Mint is authorized, with the approval of the Secretary of the Treasury, to purchase bullion for subsidiary coinage, and this authority, under the act of March 3, 1903 (32 Stat. 1109), is without limitation, express or implied. 25 Op. 170.

#### VI. Bonds.

176. Purchase of United States bonds—Commission for purchase.—The power given the Secretary of the Treasury by section 2 of the act of March 3, 1881 (21 Stat. 457), to purchase United States bonds with the surplus money in the Treasury not otherwise appropriated, does not include the payment of commissions to private parties to purchase for the Government. 19 Op. 279.

177. *Same.*—Only the market price of the bond at the time of the purchase should be paid; no commissions in addition to the par value of the bond and the premium thereon can be lawfully paid. *Ib.*

178. *Same.*—Contracts for future delivery.—The power conferred by the statute does not extend to the making of contracts for future delivery, but is limited to actual cash purchases. *Ib.* (281.)

179. *Redemption, order of.*—"Continued fines."—In calling for redemption the new bonds issued by the Secretary of the Treasury known as "continued fines," those which have the highest number, i. e., "the bonds of each class last dated and numbered," as provided by the third section of the act of July 14, 1870, (16 Stat. 274), should be called first. 17 Op. 349.

180. *Redemption.—Public notice.*—Section 3 of the act of July 14, 1870 (16 Stat. 272), by taking away all authority from the Secretary of the Treasury to pay further interest after three months from public notice given of his intention to redeem certain of the bonds issued under that act, makes it imperative upon him to pay all of the bonds designated in the notice. 20 Op. 127.

181. *Same.*—Notice that requests to continue at  $3\frac{1}{2}$  per cent will be granted.—*Suggested* that the precedent established in the case of the 5 per cent bonds might be followed and a statement be appended to the notice to the effect that if within defined limits some holders of the  $4\frac{1}{2}$  per cent bonds requested to have them continued during the pleasure of the Government at  $3\frac{1}{2}$  per cent interest, such request will be granted provided they are deposited before a certain day. *Ib.*

## VII. Fines, Penalties, and Forfeitures.

182. *Remission of.*—Prior to the taking effect of the act of February 14, 1903 (32 Stat. 825), creating the Department of Commerce and Labor, the Secretary of the Treasury had no authority to remit a fine or penalty imposed for a violation of the New York Harbor act of June 29, 1888 (25 Stat. 209), nor to discontinue a suit instituted by the Government to recover a penalty under that act, and therefore the Secretary of Commerce and

Labor has no authority to direct the discontinuance of such a suit. 25 Op. 220.

183. *Same.*—The word "vessels," as used in the New York Harbor act (25 Stat. 209), does not relate to vessels in the sense contemplated by sections 5292–5294, Revised Statutes, authorizing the remission of fines, penalties, and forfeitures by the Secretary of the Treasury. *Ib.*

184. *Same.*—The Treasury Department has jurisdiction of the remission of fines, penalties, and forfeitures imposed by section 2809 Revised Statutes, upon masters of vessels for not presenting a correct manifest of merchandise imported, and also of the issuing of instructions relating to the execution of sections 2779 to 2784, inclusive. 25 Op. 535.

*See also* TREASURY DEPARTMENT, 34–42; CUSTOMS LAW, IX, g; and SEAL FISHERIES, 1–3. IMMIGRATION. *See* IMMIGRATION, VI.

INTERNAL REVENUE. *See* INTERNAL REVENUE, VI.

LIFE-SAVING SERVICE. *See* LIFE-SAVING SERVICE.

LIGHT-HOUSE BOARD. *See* LIGHT-HOUSES.

REVENUE-CUTTER SERVICE. *See* REVENUE MARINE.

STEAMBOAT-INSPECTION SERVICE. *See* STEAMBOAT-INSPECTION SERVICE.

REPAYMENT OF DIRECT TAXES. *See* DIRECT TAXES.

REMISSION OF FINE, PENALTY, OR FORFEITURE. *See* TREASURY DEPARTMENT, II, a, 34–43, VII; CUSTOMS LAW, IX, g; IMMIGRATION, VI.

PAYMENT OF BONDS. *See* TREASURY DEPARTMENT, VI.

## TREASURY NOTES.

*See* TREASURY DEPARTMENT, V.

## TREASURY WARRANT.

*See* TREASURY DEPARTMENT, 13, 14.

## TREATIES AND CONVENTIONS.

## I. In General, 1-7.

## II. With Foreign Nations.

- a. *Chile*, 8.
- b. *China*, 9-27.
- c. *France*, 28.
- d. *Germany*, 29.
- e. *Great Britain*, 30-33.
- f. *Greece*, 34-36.
- g. *Italy*, 37-39.
- h. *Mexico*, 40-45.
- i. *Prussia*, 46-47.
- j. *Spain*, 48-60.
- k. *Sweden and Norway*, 61

## III. With Indians.

*See* Indians, XIV.

## IV. Conventions, 62-74.

## I. In General.

1. **Fisheries.**—The United States has power to enter into treaty stipulations with Great Britain for the regulation of the fisheries in the waters of the United States and Canada along the international boundary. 22 Op. 214.

2. The regulation of fisheries in navigable waters within the territorial limits of the several States, in the absence of Federal treaty, is a subject of State rather than of Federal jurisdiction. *Ib.*

3. The fact that a treaty provision annuls and supersedes the law of a particular State upon the same subject is no objection to the validity of the treaty. *Ib.*

4. In case of conflict between a treaty and a subsequent statute, the latter governs. 21 Op. 80.

5. A treaty, the provisions of which are self-executing, modifies the requirement of a prior statute with which it is in conflict. 21 Op. 347.

6. A treaty of the United States is the supreme law of the land, but there is a class of treaties which, without legislation, does not become self-executing as a rule of municipal law. 19 Op. 274, 276.

7. **When operative.**—As respects performance of conditions of a grant by a private grantee, the date of a treaty is the date of its final ratification; but so far as the treaty affects the relations of the sovereigns concerned, it operates, when ratified, from the date of its signature. 23 Op. 551.

## II. With Foreign Nations.

a. *Chile.*

8. **1892, August 7—Service of the American secretary or agent.**—There is nothing in the treaty concluded by Chile with the United States on August 7, 1892, or in the appropriation for carrying it into effect, which prevents the President from requiring service under the treaty from the American secretary or agent, or from making compensation therefor at any time before the organization of the commission provided for in that treaty. 20 Op. 595.

b. *China.*

9. **1894, December 8 (28 Stat. 1210).**—The convention of 1894 between the United States and China is a treaty. Under its provisions a Chinese subject resident in a British colony, and belonging to one of the privileged classes, may be admitted here upon a certificate from the colonial government. 21 Op. 347.

10. **Same.**—A treaty, so far as its provisions are self-executing, repeals a prior statute with which it is in conflict. *Ib.*

11. **Same.**—Failure to obtain return certificate.—The Treasury Department has no authority to direct the admission of Chinese laborers who fail to obtain before departure from this country the certificate required by the treaty with China, although they have complied with all the requirements affecting Chinese who leave the United States, except the procuring of this certificate. 21 Op. 424.

12. **Same.**—A Chinese laborer who proposes to leave the United States and return, complies with the conditions necessary to demand a certificate if he file the required papers "with the collector of customs of the district from which he departs." Any rule directing him to file such papers with the collector of any other district imposes a condition not warranted by the treaty. *Ib.*

13. **Same.**—Failure to return within one year.—Detained by Canadian authorities.—The Secretary of the Treasury has no authority to permit the return to the United States of Chinese laborers who left for China after having received the necessary certificates entitling them to return, and availed themselves of the extension of one year provided by the treaty of 1894, and who, although they left China in sufficient time to reach the

United States within the extended year, were delayed in quarantine by the Canadian authorities, so that in fact they did not reach this country until three days late. 21 Op. 575.

14. **Same.**—In the extension of one year the treaty has made the sole provision for delay, and in any event the laborer must return to the United States within the additional year. *Ib.*

15. **Same.**—Neither the Secretary of the Treasury nor the collector has discretion to inquire into causes of further delay or grant an additional extension. *Ib.*

16. **Same.**—Reentry—Return certificate—Noncompliance with treaty requirements.—A Chinese laborer, holding a certificate of residence under the act of May 5, 1892 (27 Stat. 25), who, prior to his leaving this country has made application under oath for a return certificate, but who has not filed such application with the collector of customs nor received a return certificate, as required by the treaty of 1894 with China (28 Stat. 1210) and the act of September 13, 1888 (25 Stat. 478), is not entitled to reentry, although such application bears upon its face the stamp and signature of the Chinese inspector showing the departure of such laborer on a certain date. 23 Op. 619.

17. **Same.**—Article II.—The return certificate of Chinese persons entitled to return to the United States under the contingency contemplated by Article II of the treaty of 1894 with China must be accompanied by a certificate as to the facts, made by the Chinese consul at the port of departure. 22 Op. 72.

18. **Same.**—Article II.—The phrase "Chinese consul at the port of departure" used in Article II of the convention between the United States and China, proclaimed March 17, 1894, means the consul who represents the Chinese Government at the place where the laborer leaves the United States. 21 Op. 357.

19. **Same.**—The words "port" and "land," used in said treaty, do not limit the right to return to such Chinese as travel by sea. *Ib.*

20. **Same.**—From what ports Chinese should leave and at what ports return.—It is necessary for Chinese laborers to leave this country at a place which is a port and is within the jurisdiction of a Chinese consul, and that they should return to it at a port of entry where there is a collector, but as they have

the right to go and return by land, these places need not be seaports. *Ib.*

21. **Same.**—Article II.—Chinese return certificates of disability—By whom issued.—Article II of the convention with China of December 8, 1894 (28 Stat. 1219), abrogates that portion of section 7 of the act of September 13, 1888 (25 Stat. 476), which requires a returning Chinese laborer after an absence from the United States of more than one year and less than two, to present with his return certificate a certificate of the consular representative of the United States at the port of departure for this country, showing that the holder has been unable to return sooner by reason of sickness, etc., and provides that this certificate of disability shall be issued by the Chinese consul at the port of departure from this country. 23 Op. 545.

22. **Same.**—Article II.—Certificate of disability.—As heretofore held by this Department (21 Op. 357; 23 Op. 545), Article II of the treaty with China of 1894 displaced the provisions of section 7 of the act of 1888 (25 Stat. 476), with regard to the certificate of disability which must be presented by a registered Chinese laborer returning to the United States after an absence of more than one year. 24 Op. 544.

23. **Same.**—Article II.—Returning Chinese laborer.—The "additional period" of one year provided by Article II of the convention of December 8, 1894, between the United States and China (28 Stat. 1210) beyond the period in which a registered Chinese laborer is required to return to this country, is only for such time as the disability therein mentioned continues, the extreme limit of such extension under any circumstances being one year. 25 Op. 48.

24. **Same.**—The expiration of the treaty of December 8, 1894, with China will in no way affect the validity of the laws now in force relating to Chinese immigration. 25 Op. 137.

25. **Same.**—The act of April 29, 1902 (32 Stat. 176), reenacting, extending, and continuing in force for a period of ten years all laws relating to the exclusion of Chinese not inconsistent with treaty obligations, must be construed with reference to treaty obligations existing between the United States and China at that time, and not with reference to treaty obligations which may exist at a future time. So construed, only such laws as were in con-

flict with treaty obligations at the time of its passage, were not reenacted or extended. *Ib.*

26. **Same - Treaty of July 28, 1868** (16 Stat. 739)—**Chinese exclusion.**—The treaty with China of 1868, as amended by the treaty of 1880, was in part suspended by the terms of the treaty of 1894 for a period of ten years, at the end of which time (China having given notice of its final termination) the treaty obligations between the United States and that Empire will be the same as they were immediately before the taking effect of that treaty. *Ib.*

27. **Same.**—Only such obligations as arose out of the treaties with China were referred to by the language used in the act of April 29, 1902. *Ib.*

*c. France.*

28. **1853, February 23, Article VIII.**—The word "execution" in article 8 of the convention with France of February 23, 1853 (10 Stat. 996), is obviously used in the sense of performance. 18 Op. 257.

*d. Germany.*

29. **1871, December 11, Article XIV** (17 Stat. 929)—**Deserters from German vessels.**—The question as to whether deserters, or alleged deserters, from German ships of war or merchant vessels must, under article 14 of the consular convention of 1871 between the United States and Germany (17 Stat. 929), be given up without the examination authorized by section 5280, Revised Statutes, upon the written request of a German consul, and the filing of certain papers named in that article, should be submitted to the proper court for a judicial determination. 25 Op. 77.

*e. Great Britain.*

30. **1871.**—Article XXIX of the treaty of Washington was terminated two years after the date of the giving of the notice provided for in Article XXXIII. 20 Op. 388.

31. **Jurisdiction of offenses committed on the high seas.**—No constitutional objection is perceived to a provision in the proposed consular convention between the United States and Great Britain, conferring upon the courts of each country jurisdiction of offenses committed on vessels of the other on the high seas. 19 Op. 644.

32. **Regulation of fisheries.**—The United States has power to enter into treaty stipulations with Great Britain for the regulation of the fisheries in the waters of the United States and Canada along the international boundary. 22 Op. 214.

33. **The fact that such treaty provision annuls and supersedes the law of a particular State upon the same subject is no objection to the validity of the treaty.** *Ib.*

*f. Greece.*

34. **1837, December 22, Article I.**—The rights and privileges granted to the subjects of Greece by the first article of the treaty between the United States and that country, of December 22, 1837, are guaranteed to them with all the force of law. 19 Op. 303.

35. **The word "subjects," in the treaty, embraces corporations, joint-stock companies, and other associations, commercial and industrial, constituted in conformity with the law of Greece.** *Ib.*

36. **Corporations.**—No legal objection exists to the Secretary of State instructing the United States minister at Athens to give the Government of Greece an assurance that such corporations and associations may exercise in the United States all the rights and privileges granted, as above, subject to the appropriate laws of the United States and those of the several States. *Ib.*

*g. Italy.*

37. **1871.**—The tariff on statuary and other works of art (Rev. Stat., pp. 478, 479) considered in connection with the treaty of 1871 between the United States and Italy. 17 Op. 223.

38. **Same.**—That treaty makes no provision, in letter or spirit, as regards the importation, exportation, or prohibition of articles, the produce or manufacture of Italy, where dealt in by Italian citizens residing in Italy, excepting that such importations, etc., shall be upon as favorable a footing as like commerce by English, French, German, or other foreign citizens whatsoever. *Ib.*

39. **Same.**—In the administration of the tariff there has been due observance of the legal rights of Italian citizens, arising either under said treaty or under statute provisions of Congress. *Ib.*

h. *Mexico.*

40. 1848, February 2, Article VII—*Guadalupe Hidalgo*.—Article VII of the treaty of February 2, 1848, between Mexico and the United States, known as the treaty of *Guadalupe Hidalgo*, is still in force so far as it affects the Rio Grande. 21 Op. 274.

41. *Same*.—The taking of water for irrigation from the Rio Grande above the point where it becomes the boundary between the United States and Mexico is not prohibited by said treaty. *Ib.*

42. *Same*.—Article VII is limited in terms to that part of the Rio Grande lying below the southern boundary of New Mexico, and applies to such works alone as either party might construct on its own side. *Ib.*

43. *Same*.—The only right the treaty professed to create or protect with respect to the Rio Grande was that of navigation. *Ib.*

44. *Same*.—Claims against the United States by Mexico for indemnity for injuries to agriculture alone, caused by scarcity of water resulting from irrigation ditches wholly within the United States at places far above the head of navigation, find no support in the treaty. *Ib.*

45. *Same*.—Article XXI.—A former citizen of the United States, who in 1889 expatriated himself and became a citizen of Mexico, can not invoke Article XXI of the treaty of *Guadalupe Hidalgo* for an arbitration as against an act of this Government done while he was a citizen thereof. 20 Op. 118.

i. *Prussia.*

46. 1828, May 1.—The “most-favored-nation clause” in the treaty of May 1, 1828, between the United States and the Kingdom of Prussia is not violated by paragraph 608 of the tariff act of August 27, 1894 (28 Stat. 544), which lays a discriminating duty on salt imported from a country which imposes a duty on salt exported from the United States. 21 Op. 80.

47. *Same*.—When operative.—That treaty is to be taken as operative as respects so much of the German Empire as constitutes the Kingdom of Prussia. *Ib.*

j. *Spain.*

48. 1898, December 10—Article XIII (30 Stat. 1758).—A patent or license granted July

11, 1898, to a Spaniard for the manufacture of hemp by steam, etc., in the Philippine Islands for the term of five years is protected by article 13 of the treaty with Spain, if on that date it would, in ordinary times, have been good under Spanish law, notwithstanding American law gives no identical rights. 22 Op. 617.

49. *Same*.—The laws of Spain concerning industrial property were contemplated by the framers of article 13 in providing protection for Spanish rights. *Ib.*

50. *Same*.—Return of Spanish soldiers captured.—Under the treaty with Spain the United States obligated itself to convey from the Philippine Islands to Spain only such Spanish soldiers as were actually made prisoners of war either by the United States or by the insurgents. 22 Op. 383.

51. *Troops remaining under arms*, under the control and direction of Spanish officers, are to be removed at the expense of the Spanish authorities. *Ib.*

52. *Same*.—Articles V and VI—*Repatriation of Spanish prisoners*.—The treaty of Paris of December 10, 1898 (30 Stat. 1756), contemplates and provides for the repatriation by the United States of all Spanish prisoners captured and held by them, or held and released by the insurgents in Cuba and the Philippines—soldiers and civilians—men, women, and children, and whether their detention was originally voluntary as to them or otherwise. 23 Op. 9.

53. *Same*.—Contract with Ceballos & Co.—To carry out the provisions of that treaty the War Department entered into a contract with Ceballos & Co., by which that company agreed to transport to Spain “such number of prisoners of war and persons as may be designated by the Secretary of War.” Under that contract the authorities of the United States only were authorized to decide what persons came within the classes described in the treaty and the contract, and the company was bound to receive and transport all who were thus tendered. *Ib.*

54. *Same*.—Construction of treaty—*Payment*.—The United States had the right to adopt, as against itself, as liberal a construction of that treaty as it chose; and the company having in good faith performed its part of the contract, the payment therefor can not be affected by the fact that the agent of the

United States exceeded his authority by tendering for transportation some persons who, as afterwards decided, did not come within the purview of that treaty. *Ib.*

**55. Same—Article IX—Citizenship of Spaniards in Cuba.**—Under Article IX of the treaty of Paris, 1898 (30 Stat. 1759), a Spaniard born in the peninsula, who died in Cuba before the expiration of one year from the ratification of that treaty, was, in contemplation of the treaty, a Spanish subject at the time of his death. 23 Op. 93.

**56. Same—Article XI—Alien law—Administration.**—Article XI of that treaty obliges the United States to see that Spaniards in Cuba have the same rights to appear before Cuban courts and pursue the same course therein as citizens of Cuba, but it does not make it unlawful for the laws of that country to give them better methods of appearing and proceeding as aliens or Spanish subjects than those enjoyed by the citizens themselves. Consequently that article does not prevent article 44 of the alien law of Cuba from being applicable to the estate of Don Ramon Martí y Buguet, a native of Tarragona, Spain, and a Spanish subject, who died intestate at Baez, Santa Clara, Cuba, July 2, 1899. *Ib.*

**57. Same.**—The coastal waters, harbors, and other navigable waters of the island of Porto Rico are waters of the United States within the meaning and intent of section 10 of the river and harbor act of March 3, 1899 (30 Stat. 1151), although the ratifications of the treaty whereby that island was ceded by Spain to the United States were not exchanged until after the passage of that act. 23 Op. 551.

**58. Same.**—The relinquishment of sovereignty over and the cession of domain by Spain to the United States of the island of Porto Rico by the treaty of Paris of April 11, 1899 (30 Stat. 1754), must be regarded as immediate and absolute from the date of its signature, subject only to the possibility of a failure of ratification. *Ib.*

**59. Same.**—While as respects performance of conditions of a grant by a private grantee, the date of a treaty is the date of its final ratification, so far as it affects the relations of the sovereigns concerned, it operates, when ratified, from the date of its signature. *Ib.*

**60. Same—Article VIII (30 Stat. 1758)—Cession of Guam—Public domain.**—Under Ar-

ticle VIII of the treaty of peace with Spain of 1898, the United States acquired by cession a valid title to lot 144, city of Agaña, island of Guam, which at that time belonged to the Spanish Government. 25 Op. 242.

#### *k. Sweden and Norway.*

**61. 1827, Article VIII—Shipping.**—No warrant is to be found in Article VIII of the treaty of 1827 with Sweden and Norway, for the claim that the shipping of that power is entitled to the benefits of the act of June 26, 1884 (23 Stat. 57), "to remove burdens on the American marine and to encourage the American-carrying trade," without submitting to the conditions imposed by that act. 18 Op. 382.

#### III. With Indians.

*See* INDIANS, XIV.

#### IV. Conventions.

**62. With Great Britain—Jurisdiction of offenses committed on the high seas.**—No constitutional objection is perceived to a provision in the proposed consular convention between the United States and Great Britain conferring upon the courts of each country jurisdiction of offenses committed on vessels of the other on the high seas. 19 Op. 644.

**63. Patents and trade-marks.**—The second article of the convention entered into between the United States and certain other nations, in regard to patents and trade-marks, proclaimed by the President on June 7, 1887, is not self-executing; and Congress having passed no law for its execution, it can not be deemed to extend the privilege of filing caveats, preliminary to applications for patents, granted by said section 4902 to the subjects and citizens of the nations parties to said convention. 19 Op. 274.

**64.** A treaty of the United States is the supreme law of the land, but there is a class of treaties which, without legislation, does not become self-executing as a rule of municipal law. *Ib.* (276).

**65. Postal conventions.**—The postal convention with Canada and section 15 of the act of March 3, 1879 (20 Stat. 359), were not intended to affect existing tariff laws. 17 Op. 159.



**66. Same.**—Under section 398, Revised Statutes, the Postmaster-General has power, with the approbation of the President, to conclude a postal convention with a foreign country for admission to and transmission through the mails exchanged with such foreign country of parcels of mail matter of either class exceeding 4 pounds in weight. The limitation as to weight of mail packages in section 3879, Revised Statutes, applies only to domestic mail service. 19 Op. 39.

**67. Same.**—Section 398, Revised Statutes, relates to foreign, and section 3879 to domestic mail service. 19 Op. 39, 42.

**68. Same—Power of Postmaster-General to negotiate and conclude.**—The provisions of section 398, Revised Statutes, authorizing the Postmaster-General, with the advice and consent of the President, to negotiate and conclude postal treaties and conventions between the United States and foreign countries, are not in conflict with that part of section 2, Article II, of the Constitution, giving the President "power by and with the advice and consent of the Senate to make treaties," etc. 19 Op. 513.

**69. Same—Constitutional Interpretation.**—The Federal legislation and practice in this regard from 1792 to date sanction an interpretation of the Constitution different from that which might be reached by the ordinary rules of construction were the question a new one. *Ib.*

**70. Same.**—The right of Congress to vest in the Postmaster-General power to conclude conventions with foreign governments for the cheaper, safer, and more convenient carriage of foreign mails may be derived from the authority given that body in the seventh clause of section 8, Article I, of the Constitution, to establish post-offices and post-roads. *Ib.*

**71. Same.**—Sections 396, 4012, and 4028, Revised Statutes, are constitutional and valid. *Ib.*

**72. Same.**—Opinion of Attorney-General Garland of June 30, 1887 (19 Op. 39), as to the power of the Postmaster-General to enter into conventions with foreign governments touching the regulation of foreign parcels post, cited with approval. *Ib.*

**73. Same.**—The registry provisions of the Postal Convention of Washington are not operative in or as to the United States, but its liability is only that imposed by the act of 1897

and the rules of the Post-Office Department made in pursuance thereof. 22 Op. 363.

**74. Same.**—Until Congress shall otherwise provide with reference to indemnity for lost registered mail the Postmaster-General may either pay the limited indemnity on foreign matter, as provided in the act of 1897, irrespective of what other countries may do, or so amend the rules of the Department as to limit the indemnity to lost registered matter originating in and addressed to a place within the United States. *Ib.*

TREATY OF WASHINGTON. See II, e.

TREATY OF GAUDALUPE HIDALGO. See II, h.

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### TROOPS.

EMPLOYMENT OF, IN ENFORCING THE LAWS.  
See ARMY, I, a.

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### TRUST FUNDS.

School farm lands—Power of the Secretary of the Treasury to invest proceeds of sale of, in other than United States bonds.—The investment of trust funds (money derived from the sale of school farm lands) made by the Secretary of the Treasury, under the provisions of the act of March 3, 1873 (17 Stat. 600), and section 3 of the act of May 7, 1878 (20 Stat. 58), in 5 per cent bonds of the United States, which have since been called for payment, may be continued by him in the same bonds at 3½ per centum, in accordance with the circular of the Treasury Department of May 12, 1881, or he is at liberty to pay off such bonds and invest the proceeds in any other bonds of the United States for the benefit of the trusts mentioned in the provisions aforesaid. 17 Op. 217.

See also INDIANS, V, c.

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### TUTUILA.

Duties on goods coming from that island.—In view of the convention concluded by the United States, Great Britain, and Germany on December 2, 1899 (31 Stat. 1878), the island of Tutuila is not a foreign country

within the meaning of our tariff laws, and goods coming into the United States from that island are not subject to duty. 23 Op. 629.

*See also* GUAM, 7.

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#### TWENTY-EIGHT-HOUR LAW.

*See* RAILROADS, 69, 70.

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#### TYBEE ISLAND, GA.

*See* CONTRACTS, 82; RESERVATIONS AND PARKS, 19.

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#### ULTRA VIRES.

*See* CORPORATIONS, 3.

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#### UNCOMPAHGRE UTE INDIANS.

*See* INDIANS, 32.

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#### UNEXPENDED BALANCES.

OF APPROPRIATIONS. *See* NAVY, 23, 209.

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#### UNDERVALUATION.

*See* CUSTOMS LAW, 413-416.

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#### UNION PACIFIC RAILROAD.

*See* RAILROADS, II, d; III, 50, 51.

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#### UNION AND CENTRAL PACIFIC RAILROAD COMPANY.

SINKING FUND. *See* RAILROADS, II, d.

#### UNION RIVER LOGGING RAILROAD COMPANY.

*See* RAILROADS, 45-47.

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#### "U. S."

DEVICE ON FIREARMS. *See* FIREARMS.

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#### UNITED STATES.

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#### I. Authority, Jurisdiction, Power.

1. Protection of fishery rights.—The waters of Lake Champlain, within the limits of the United States, being partly in New York and partly in Vermont, the right to take fish therefrom depends solely upon the laws of the one or of the other of those States, according as the *locus* is within the boundaries of the one or of the other. The General Government can afford no relief where individual rights are interfered with. 17 Op. 74.

*See also* SEAL FISHERIES.

2. Injunction—Injury to improvements in navigable waters.—The United States may avail itself of the remedy by injunction to protect from injury improvements in navigable waters made under authority of Congress. 17 Op. 279.

3. Hours of labor.—Congress may fix the hours of labor upon all the works of the United States, wherever conducted, and make the law binding upon the officers of the United States and, through the agency of contracts, upon all contractors with the United States. 25 Op. 442.

*See also* PANAMA, 9-11, 15, 16.

4. **Exercise of official power—Authority for.**—As a general rule, when it is sought to exercise any official power or function, explicit authority must be found in the law; but the application of this doctrine is not necessarily universal, and depends upon the character and relations of the particular power and all the germane circumstances. 25 Op. 98.

5. **The powder officer for the harbor of Norfolk, Va.,** appointed under the act of March 3, 1880, of that State, has no authority over powder belonging to the Federal Government, and the United States is not liable for any charge for services performed by him under the authority of that law. 25 Op. 234.

6. **Voluntary or compulsory service.**—The United States have the right to prescribe the rules and conditions under which voluntary or compulsory services are to be rendered by citizens. 21 Op. 327.

7. **"The power to regulate commerce** is one of the instances in which the Constitution operates *proprio vigore*, and its effect as to the navigable waters of the Union was to establish them as highways, open to the free and unrestricted use of all persons engaged in foreign or interstate commerce. To secure this great end was one of the inducements to the States to surrender control over their waters." 18 Op. 405.

8. **"Whether, then, Congress has spoken or not spoken, the duty of the United States towards commerce** in its several departments of traffic, intercourse, and navigation is equally imperative." *Ib.*

9. **The power of the United States to regulate commerce with foreign nations** and among the several States includes the right to regulate the use of all the means and instrumentalities used in commerce, whether on sea, river, harbor, or land, and entirely irrespective of whether a State has attempted to regulate the same matter or not. 22 Op. 501, 646.

10. **Same.**—This power is general, absolute, and without limit, either as to the time, place, or detail of its exercise, except as to waters whose entire navigability for commerce is limited to the confines of a single State. 22 Op. 646.

11. **The regulation of commerce and navigation being entirely within the control of Congress,** there is no authority for an Executive Department to make or enforce rules or regulations relative to the registry of vessels or

kindred matters connected with such subjects. 22 Op. 566.

12. **Wireless telegraphy—Regulation of commerce.**—The transmission of messages by wireless telegraphy is commerce, and the power of the United States to regulate commerce and to preserve the territorial integrity of this country does not depend upon the means employed, but upon the end attained. 24 Op. 100.

13. **Same—International agreement.**—The United States have power, either alone or in cooperation with other countries, to impose conditions upon the operation of any wireless telegraph system which conveys messages to or from the United States. *Ib.*

14. **Cables.**—No one has a right to land a foreign cable upon our shores and establish a physical connection between our territory and that of a foreign state without the consent of the Government of the United States. 22 Op. 13.

15. **Same.**—If a landing has been effected without the consent or against the protest of this Government, respect for its rights and compliance with its terms may be enforced by applying the prohibition to the operation of the line unless the necessary conditions are accepted and observed. *Ib.*

16. **Same.**—The President has the power, in the absence of legislation by Congress, to control the landing of foreign submarine cables on the shores of the United States. He may either prevent the landing or permit it on conditions which will protect the interests of this Government and its citizens. *Ib.*

17. **Same.**—The grounding of a cable upon the soil of the United States, with the intention of connecting our territory with foreign territory by that means, is a matter which is under the sovereign control of the Government, to be exercised by Congress, but in the absence of Congressional action to be regulated and controlled by the executive department of the Government. 22 Op. 408, 514.

18. **Same.**—The grounding of a cable upon the island of Cuba to connect it with a foreign country can not be done and maintained in opposition to the law of the Government, which exercises sovereign power in the island. 22 Op. 514.

19. **Same.**—The authorities of the United States have full power, in their discretion, to prevent by all necessary means the grounding

of a cable in Cuba intended to connect that island with the United States or with any other country. *Ib.*

20. **Same.**—The Secretary of War is justified in using force to remove or disrupt any such cable which may be laid in disregard of his instructions and against his will. *Ib.*

*See also* CABLES.

21. **Military roads built by the United States** under the authority of Congress, though within a State, are not subject to State, municipal, or private control or interference in any way. 23 Op. 283.

22. **Jurisdiction of State harbor commissioners—United States Navy-Yard at Norfolk, Va.**—The State of Virginia, through its legislature, having duly relinquished jurisdiction over the lands belonging to the United States at the navy-yard at Norfolk, upon which it is proposed to construct a dry dock, the State board of harbor commissioners for the port of Norfolk and Portsmouth is without authority to require the submission to and approval by it of the plans of the contemplated improvement, although such improvement be within the harbor line established by that board. The authority of the United States over that harbor is paramount and absolute. 24 Op. 50.

23. **Instrumentalities of the National Government—Release of cruiser Galveston from possession of State court.**—The Attorney-General defers answering the question as to the right of the Secretary of the Navy, under the direction of the President, to employ the military forces of the Government to obtain possession of the cruiser *Galveston*, in course of construction under contract with the Wm. R. Trigg Company, of Richmond, Va., which company has gone into the hands of a receiver appointed by the chancery court of Virginia, for the reason that a method of procedure in such cases is provided for by section 3753, Revised Statutes, and occasion for the exercise of this power is not likely to arise if the stipulation authorized by that section is filed. 24 Op. 679.

24. **Same.**—No instrumentality of the Federal Government may be taken into custody and held under any adverse authority whatever. This applies as well to an instrumentality in process of creation as to one already completed. *Ib.*

25. **Same.**—The United States is entitled to the undisputed possession and control of its property and of property in which it is interested to the extent of that interest, and this possession and control are exempt from the process of every court. *Ib.*

26. **Same.**—The word “stipulation” as used in section 3753, Revised Statutes, denotes an undertaking in the nature of bail, and is analogous to the “stipulation for value,” under present admiralty practice, the measure of the Government’s obligation being limited in section 3754, Revised Statutes, to “the value of the interest of the United States in the property in question.” *Ib.*

27. **Wharfage charges on property of the United States.**—The imposition of a toll or charge by the State harbor commissioners of California on merchandise, the property of the United States, passing to or over the wharves at San Francisco, is constitutional and valid; the charge being for a service rendered, the Government is not entitled to such service free of toll. 23 Op. 299.

28. **Such a toll or charge is not a tax upon or in respect of interstate traffic, nor a tax upon the instrumentalities and agencies of the General Government,** within the prohibitions of the Constitution, but is a charge for the use of property and facilities furnished the Government by the State of California. *Ib.*

29. **Martello towers near Fort Taylor, Fla.**—The United States can hold possession of the sites of the advanced martello towers, outworks of Fort Taylor, Fla., which were erected during the rebellion, and exclude all intruders therefrom, whether they claim to be owners or not, and no proceedings to oust the United States from such possession are maintainable. 17 Op. 6.

**NOTE.**—But see *United States v. Lee* (106 U. S. 196).

30. **Same.**—*Advised*, that if the title to such land has not been acquired by the Government, but is held by individuals, and it is deemed expedient to permanently retain possession thereof for military purposes, application be made to Congress by the War Department for authority to acquire the same, instead of forcing the owners to go there for relief. *Ib.*

31. **Property seized for war purposes.**—The United States had authority to take possession of and use real estate during the period of the

war for war purposes, but they did not have authority or power, by any summary proceeding, to divest the title of the owner, nor the power to retain possession beyond the period during which the occasion for the taking continued. 21 Op. 382.

**32. Same.**—A proceeding to ouster the Government from such possession, while not maintainable strictly against the United States, may be maintained against the individuals in possession of the premises. *Ib.*

**33. Same.**—The United States having taken possession and still retaining the same, such possession can not be surrendered by the officers of the Government without authority from the Secretary of War. *Ib.*

**34. Same.**—If the United States have abandoned such real estate and the lawful owner has entered and taken possession, his possession is lawful and can not be disturbed. *Ib.*

**35. Same.**—If the United States is in possession of land taken during the war for war purposes, and is forcibly ejected or ousted, even by the lawful owner, such possession is unlawful and should be restored to the United States. *Ib.*

POWER OF THE UNITED STATES OVER NAVIGABLE WATERS, etc. See NAVIGABLE WATERS, I, b.

## II. Officers.

**36. Additional compensation.**—Clerk designated to take charge of erection of public building.—It was competent for the Secretary of War, under the act of June 16, 1880 (21 Stat. 259, 260), providing for the construction of a building at the corner of Seventeenth and F streets, Washington, D. C., to designate a clerk from the office of the Chief of Engineers to take charge and superintend the work, and to compensate him from the fund appropriated, his salary and services as clerk having been suspended during the period. The case is not within section 1765, Revised Statutes, there being no "additional pay, extra allowance, or compensation" received by said clerk. 17 Op. 321.

**37. Extra compensation.**—The elements necessary to justify the payment of compensation to an officer of the Government for additional services are: That they shall be performed by virtue of a separate and distinct appoint-

ment authorized by law; that such services shall not be services added to or connected with the regular duties of the place he holds, and that a compensation whose amount is fixed by law or regulation shall be provided for their payment. 19 Op. 121.

**38. For preparation of the Postal Laws and Regulations.**—The act of March 3, 1891 (26 Stat. 880), appropriating money for a new edition of the Postal Laws and Regulations does not authorize the Postmaster-General to make an allowance to an officer of his Department whom he may designate for the preparation of that volume. 20 Op. 221.

**39. Same.**—Section 1765, Revised Statutes, and section 3 of the act of June 20, 1874 (18 Stat. 109), prohibit an officer of any branch of the Government from receiving additional or extra compensation for any service rendered by him, if the service so rendered have any affinity or connection with the duties of his office, unless such compensation is "authorized by law, and the appropriation therefor explicitly states that it is for such additional pay, extra allowance, or compensation." 22 Op. 223.

See also UNITED STATES ATTORNEYS; OFFICE AND OFFICERS, VII; and COMPENSATION.

**40. Witness fees.**—Government employees are not entitled to witness fees when subpoenaed to testify in behalf of the United States, but are entitled to their expenses. When subpoenaed by a private party, they may demand and accept witness fees. 21 Op. 263.

**41. Government employees.—Influencing legislation in their own interests.—President's order.**—The order of the President of January 31, 1902, forbidding all officers and employees of the United States to influence legislation by Congress in their own interest, prohibits the Navy-Yard and Arsenal Employees' Protective Association, of Washington, from seeking to influence Congress or its committees to pass a pending bill granting an additional fifteen days' leave of absence to the employees who constitute that association. 23 Op. 637.

**42. Compulsory jury duty.**—The question as to the right of a State judge to compel an employee of the Federal Government to perform jury duty, not decided, as no such serious occasion is shown to have arisen as

would justify the Attorney-General reviewing the ruling of a State judge. 20 Op. 618.

*See also* EXECUTIVE DEPARTMENTS; the several Executive Departments individually; ARMY; NAVY; OFFICE AND OFFICERS, and the various officers under their several titles.

OFFICIAL BONDS. *See* BONDS II; ALSO SURETY AND SURETY COMPANIES.

### III. Rights and Duties.

43. The right of the United States in the manufacture of a patented breech mechanism under a license which reads "to manufacture \* \* \* guns containing the patented improvements and to use and sell the same," is confined to the right to manufacture in its own shops, and does not include contracting with other parties therefor. 22 Op. 10.

44. *Same.*—From the right to use a patent the right to make or have made may be implied; but this implication can only be made when the right to use is unrestricted. *Ib.*

45. Retention of funds in dispute.—Where funds in the hands of the Secretary of War are involved in a controversy between parties, pending under different forms of procedure in different jurisdictions, they should be retained by him until a final adjudication of the whole matter by the tribunal to which the parties may last resort. 21 Op. 447.

46. Bonds of indemnity required of certain officers.—Where loss may result to the Government or its officers from the use by contractors of patented inventions, or other property of third persons, a bond of indemnity should be required. 21 Op. 97.

For rights and duties in regard to any particular subject, *see* that subject.

CONTRACTS. *See* CONTRACTS.

DUTY TO PROTECT INDIAN ALLOTTEES. *See* INDIANS, III, a.

### IV. Obligations and Liabilities.

47. A canceled postage stamp is not an obligation or security of the United States within the meaning of section 5430, Revised Statutes. 20 Op. 691.

48. An uncanceled postage stamp is an obligation or security of the United States within

the meaning of section 5430, Revised Statutes. 20 Op. 697.

49. The board bills of Chinese boys remaining at Richford, Vt., after they are, by the authority of the Treasury Department, denied the privilege of coming within the United States, should not be paid by the United States pending their subsequent arrest by the United States marshal and a hearing thereafter under the Chinese exclusion acts, as they are neither under detention nor arrest. 22 Op. 51.

50. *Same.*—Detention by an officer is in effect an arrest, and a person under detention or arrest must be furnished subsistence at the expense of the Government making the arrest. *Ib.*

51. Not liable for recall of warrant issued to an attorney not entitled to receive it.—The Secretary of the Treasury may recall his action in delivering a warrant to an attorney not entitled under the law to receive it, and may take necessary measures, by issuing a new warrant or otherwise, to pay the money involved to the party for whom it was appropriated by Congress. The Government does not become liable to the attorney for the amount of his fee for recovering the claim. 25 Op. 279.

52. Transportation orders fraudulently issued—Liability of the United States.—Where blank transportation requests were delivered to an officer of the United States Army in such form as to require but the filling of the blanks and his signature to make them Government orders upon carriers for the transportation therein indicated, and where these blanks were issued fraudulently to persons not entitled to them, and railroad companies furnished transportation upon the orders, in the absence of negligence and bad faith on the part of the carriers, the United States is liable for the transportation thus furnished. 23 Op. 161.

53. The owners of an American vessel wrecked on the South Pacific Ocean, whose master paid the United States consul at Apia for clothing supplied the crew, out of the wages due the crew, they having subsequently recovered judgment for their wages in a United States court, have no valid claim against the United States for the money paid by the consul. The remedy, if any, is against the consul and the sureties on his bond. 19 Op. 22.

54. **Same.**—The United States is not liable to its citizens for the consequences of the wrongs or shortcomings of its officers. *Ib.* (24.)

55. **Mechanic's lien.**—Assuming that the title to the land on which a dry dock is built, and the exclusive jurisdiction over it, are in the United States, the mechanic's lien laws of South Carolina do not operate thereon, and claims under such laws may be ignored in settlements with contractors. 22 Op. 18.

56. The obligations of the United States with reference to Cuba are merely those which arise from the fact that it is a temporary military occupant. 22 Op. 384.

57. **Same.**—The United States Government is not the successor of the Government of Spain in Cuba, but merely an intervening power arranging the succession, and as such it can not be held to have assumed the obligations arising from or growing out of concessions granted or contracts entered into by the Spanish Government in Cuba previous to its surrender of sovereignty therein. *Ib.*

*See also CUBA.*

58. The ordnance and other stores belonging to the several States, taken or accepted by the Government for use in the war with Spain, should not be returned in kind, but should be paid for at the price agreed upon, or in the absence of an agreement, what they were worth. 22 Op. 372.

59. **Same.**—In the absence of any of the appropriation for the maintenance of the militia in the several States, or of arms, ordnance stores, etc., purchased with it, the Government is not required or empowered to issue to the several States stores in kind to replace such arms, ordnance stores, etc., as were exhausted, consumed, or impaired by use in the war with Spain; nor can it make compensation for such stores, as they were the property of the United States, having been originally purchased by the Federal Government. *Ib.*

60. The laches or mistakes of officers of the United States in regard to the ownership of land upon which Government buildings and improvements are erected, is no bar to the right of the United States to remove or sell such buildings, etc. 20 Op. 284.

61. **Telegraph messages.**—Where the Government has the power to send telegraph messages either by a bond-aided railway's telegraph system or by an independent com-

pany system located over the bond-aided railway company's route, and delivers them to the independent company's system without requesting that they be forwarded over the bond-aided railway route, payment must be made at the rate prescribed by the Postmaster-General. 20 Op. 581.

62. **Same.**—It is not improper to delay payment of the claim until the case involving the point now soon to be argued in the Supreme Court of the United States is decided. *Ib.*

63. **Construction of levees along Mississippi River.**—The United States will not render itself liable in damages to persons owning property along the Mississippi River on whose land it proposes to build levees, for the reason that the State of Louisiana is the owner of a servitude or interest in the lands of all riparian owners along that river for the purpose of building levees to restrain its waters within definite limits during flood times, and has surrendered to the United States for that purpose its servitude in the lands in question. 20 Op. 625.

LIABILITY FOR USE OF ARTICLE PATENTED BY AN OFFICER OR EMPLOYEE OF THE UNITED STATES GOVERNMENT. *See PATENTS, 6-8.*

#### V. Lands of.

64. **Jurisdiction of a portion of Holston street, Knoxville, Tenn.**—No reason exists requiring the United States to disclaim the existence of any power or jurisdiction to interfere with the acts of a street railway company in constructing and operating its lines on a portion of Holston street, Knoxville, Tenn., which street the United States is supposed to control by virtue of certain expenditures authorized by the act of July 28, 1886 (24 Stat. 159), by an ordinance of that city, and by a grant, or attempted grant, by the county road commissioner of the county wherein said street is situated. 20 Op. 539.

65. **Lands of the United States within the limits of a State** are not subject to State laws, except there be in the act of its legislature, under which jurisdiction was ceded to the United States, a reservation of concurrent jurisdiction to the State. 21 Op. 18.

66. The jurisdiction of this nation within its own territory is necessarily exclusive and

absolute. It is susceptible of no limitation not imposed by itself. 22 Op. 13.

**67. Cessions reserving concurrent jurisdiction.**—The certificate of the governor of Wisconsin, in conformity to section 2, chapter 1, of the Revised Statutes of 1878 of the State, consenting to the purchase of certain land by the United States, provided the State shall forever retain concurrent jurisdiction over any such place to the extent that all legal and military process issued under the authority of the State may be executed anywhere on such place or in any building thereon or any part thereof, and that any offense against the laws of the State committed on such place may be tried and punished by any competent court or magistrate of the State, to the same extent as if such place had not been purchased by the United States, does not satisfy the provision of section 355, Revised Statutes of the United States. 20 Op. 611.

**68. Same.**—A State statute that the United States "shall have the right of exclusive legislation and concurrent jurisdiction" is not a compliance with an act of Congress for the erection of a building which provides for exclusive jurisdiction save as to the administration of the criminal laws of the State and the service of civil process therein. 20 Op. 242.

**69. Same.**—A State statute that the United States shall have over land to be taken for a public building "the right of exclusive legislation and concurrent jurisdiction together with the State of Louisiana" is not a compliance with the act of April 26, 1890 (26 Stat. 67), requiring a cession to the United States of jurisdiction over the site selected for all purposes except the administration of the criminal laws of said State. 20 Op. 298.

**70. Same—Land acquired by United States—Exclusive jurisdiction.**—Where the United States has acquired title to lands by purchase by consent of the legislature of a State, and there was no reservation on the part of the State of concurrent jurisdiction over the lands so disposed of, the Federal jurisdiction is exclusive of all State authority. 23 Op. 254.

**71. Same—Service of State process.**—An act of the State of Georgia, passed December 22, 1808, provided that from and after the passage of that act the Congress of the United States shall have and maintain jurisdiction in and over all the lands they have acquired,

or may hereafter acquire, for the purpose of erecting forts and fortifications in that State. In 1875 the United States acquired by purchase from a citizen the lands upon which is now located the military reservation on Tybee Island, in that State. *Held*, That under the provisions of the act of 1808, the United States acquired and retains exclusive jurisdiction over that reservation, and the sheriff of the county within which it is situated has no power to go and serve thereon any process whatsoever issued by a court of that State. *Ib.*

**72. Same.**—The act of Georgia of March 2, 1874, can have no application to this reservation, for at the time of its purchase that act was not in existence, and no right on the part of the State to serve civil or criminal process thereon having been reserved, the grant of power to the United States was and is exclusive of all State authority. *Ib.*

**73. Same—Reservations in State cessions of lands to the United States.**—The act of Louisiana, approved June 30, 1892, ceding jurisdiction to the United States over certain lands in that State for public purposes, and providing for the purchase and condemnation thereof, satisfies the requirements of section 355, Revised Statutes, and no further cession of jurisdiction is legally required. 24 Op. 617.

**74. Same.**—The settled construction of the Department of Justice is that the "consent" of the legislature of a State to the purchase of lands therein by the United States, required by section 355, Revised Statutes, must be free from any conditions or reservations inconsistent with the exercise by Congress of "exclusive legislation" thereafter; but the reservation by a State of the right to serve and execute its civil and criminal process in the place ceded has always been held permissible. *Ib.*

**75. Land acquired by condemnation—Tax liens.**—Where the title to land in Cincinnati, Ohio, was acquired by the United States by condemnation, and jurisdiction over the land so acquired was ceded to the United States by the State: *Held*, That taxes theretofore assessed upon the land by the city authorities, and remaining unpaid, ceased thereafter to be a lien on the land, and did not become a proper charge against the United States, the State having virtually relinquished its lien when it parted with jurisdiction. 17 Op. 44.



76. **Same.**—Title to the additional ground authorized to be purchased by the act of July 10, 1886 (24 Stat. 141), for the site of a public building to be erected in Williamsport, Pa., may be acquired by the institution of condemnation proceedings under the laws of the State of Pennsylvania, in case no agreement for the purchase thereof can be made with the owner. 18 Op. 484.

77. **Same.**—Under an act of the legislature of New York, passed April 2, 1885, a valid title to certain lands situated in the cities of Troy and Auburn, in that State, which have heretofore been selected for the sites of Government buildings authorized by Congress to be erected there, may be acquired by the United States by condemnation proceedings instituted in the State court pursuant to its provisions. 18 Op. 352.

78. **Same.**—The acts of Congress of March 3, 1885 (23 Stat. 348 and 382), providing for the purchase of such sites, may properly be taken to authorize the acquisition thereof in any mode which is in conformity to the laws of the State. Hence where, by a law of the State, the property may be condemned and title thereto acquired under the eminent domain power of the State, recourse may be had as well to this mode of acquisition as to any other under the authority conferred by those acts. *Ib.*

79. **Land acquired by condemnation.**—The Secretary of War is authorized by the act of March 3, 1893 (27 Stat. 600), and the laws of Pennsylvania of 1889 (pp. 106–108), to institute condemnation proceedings to acquire certain land, being a portion of the battlefield of Gettysburg, over which a trolley railroad is being constructed, and may apply to the court for an injunction to restrain the construction and operation of said proposed railroad. 20 Op. 628.

80. **Same.**—Under and by virtue of condemnation proceedings in the proper court for acquisition of certain lands on Tiger Island, Florida, in which the court directed the United States marshal, upon payment of amounts awarded and the sums taxed as costs, to make and deliver to the United States a good and sufficient deed of the premises, held that on compliance with this order a valid title to the lands will rest in the United States. 20 Op. 431.

81. **Lands acquired by donation.**—The Secretary of the Treasury, without further authority than the act of March 3, 1891 (26 Stat. 1094), may accept a voluntary grant of land from the city of Saginaw, Mich., to be used for the purposes of a public building. 21 Op. 455.

82. **Same.**—No legislation of Congress is needed to enable the United States to take and hold land received through voluntary gift, devise, or grant. *Ib.*

83. **Same.**—The United States in their sovereign capacity have power to acquire and hold real property wherever and whenever such property is needed for the use of the Government in the execution of any of its powers. *Ib.*

84. **Same.**—Such property may be acquired by any means by which natural or artificial persons may acquire property subject in certain cases to the local laws of the States. *Ib.*

85. **Same.**—The Secretary of War has no power to accept for the Government a donation of a building to be erected upon a military reservation, where the acceptance is accompanied by a limitation for its use in perpetuity by Roman Catholics. 21 Op. 537.

86. **Title.**—Tax receipts are sufficient evidence that the land is discharged and redeemed from a tax sale and taxes, and a deed to such land held sufficient to convey to the Government a valid title. 20 Op. 430.

87.—Title to lot 144, city of Agana, Guam.—Under Article VIII of the treaty of peace with Spain of 1898, the United States acquired by cession a valid title to lot 144, city of Agana, island of Guam, which at that time belonged to the Spanish Government. 25 Op. 242.

88. **Disposal of Dragoon Barracks lot, St. Augustine, Fla.**—The piece of land known as the Dragoon Barracks lot, in St. Augustine, Fla., and the buildings thereon, being the property of the United States, may be appraised and disposed of in the manner provided by the second and third sections of the act of July 5, 1884 (23 Stat. 103). 18 Op. 543.

See also PUBLIC BUILDINGS; and PUBLIC LANDS.

## VI. Property of.

89. **Stone taken from bed of Lake Huron, Michigan, in front of private property and delivered on Government works.**—*Seemle* that the

proprietors of land adjacent to Lake Huron, Michigan, have no legal right to stone taken from the bed of that lake, in front of their property, by other persons, and delivered by the latter on the Government works, the ownership of such bed being apparently in the State. Under the circumstances presented, the claim of such proprietors for the stone so taken and delivered may properly be resisted by the United States officer in charge of the works. 17 Op. 59.

90. The United States has a right to remove orsell buildings or improvements erected or made on what was supposed to be the public domain, but which afterwards proved to be covered by a Mexican land grant, and had been subsequently patented by the owner, the laches or mistake of the Government officers in regard to the ownership of the land being no bar to the Government's right in the premises. 20 Op. 284, 420.

91. Same.—An application should be made to Congress to authorize said disposition of the buildings, etc., as neither the President nor the Secretary of War has authority to dispose of the same. *Ib.*

92. Same.—Where the Government expends large sums of money on improvements erected on what is supposed to be the public domain, but which proves to be the subject of a prior grant, the title to the buildings so erected vests in the United States. 20 Op. 284, 603.

93. The Secretary of War is not authorized by the joint resolution of March 3, 1891 (26 Stat. 1116), to construct a portage railway at the Cascades, Oregon, and turn the same over after completion to the State of Oregon for operation on certain conditions. 20 Op. 93.

94. Same.—Such an act would give the State of Oregon not merely a revocable license, but a vestage right to operate the railway and derive revenue therefrom, and consequently is beyond the power of the Secretary of War, not having been authorized by the resolution in question. *Ib.*

95. The Secretary of War has no power to turn over Government property to States or individuals, to be used for any purpose not authorized by some act of Congress. 20 Op. 96.

96. Public property can be subject to claims against it only when it is in the possession of the courts, by act of the Government, seeking to have its rights established. 21 Op. 19.

97. Goods imported by the United States—Free list.—Paragraph 385 in the free list of the act of August 27, 1894 (28 Stat. 537), applies to articles purchased by the United States in foreign markets and thence imported for its own use, and does not cover articles in bond purchased from importers. Duties on such articles must be paid before delivery. 21 Op. 243.

98. A mechanic's lien can not be acquired upon property of the United States. 21 Op. 78.

99. Certain lathes and a crane.—Upon the statement of facts submitted: *Advised* that the right of the South Boston Iron Works to the possession and use of certain property (two lathes and a crane) belonging to the United States, derived under an agreement with the latter, dated January 21, 1885, has terminated, and that the right to the possession of the property is now in the United States exclusively. 19 Op. 73.

*See also* LICENSES.

#### VII. Offenses against.

100. There are no common-law offenses against the United States. 20 Op. 590.

For violations of the Customs Law, *see* CUSTOMS LAW VIII and IX.

For violations of other laws, *see* appropriate headings.

#### VIII. Actions.

101. The United States does not suffer itself to be sued without its consent. 21 Op. 19.

102. No injunction or action for damages for the infringement of a patent will lie against the Government. 21 Op. 96.

103. Proceedings to oust the United States from possession of real estate taken possession of and used during the war for war purposes, while not maintainable directly against the United States, may yet be maintained against the individuals in possession of the premises. 21 Op. 382.

17 Op. 6 concurred in. *Ib.*

104. Suing a State for collection of certain bonds.—As a recourse to law on the part of the Secretary of the Treasury for the settlement and collection of certain bonds made and issued by certain States and owned by

the United States would involve the very grave act of suing States, and as Congress has had this question repeatedly before it and has not directed such a course, the Secretary of the Treasury should not institute any suit. 21 Op. 478.

105. **Employment of counsel.**—The Secretary of the Navy is not authorized in view of section 189, Revised Statutes, to employ special counsel in foreign countries to institute suits in behalf of the United States for the purposes of recovering damages caused to war vessels of the United States, but should refer the matter to the Department of Justice for attention. 21 Op. 195.

106. **Restoration to United States of title to public land erroneously certified.**—The act of March 3, 1887 (24 Stat. 556), is mandatory, and makes it the duty of the United States, in case of an erroneous certification of land already covered by a homestead or preemption entry, to bring a suit to restore title to the United States if the party to whom the land was erroneously certified after a prior certification does not give or procure a relinquishment or reconveyance. 20 Op. 224.

#### IX. Contracts and Supplies.

107. **Purchase of patented articles—Bond of indemnity.**—When articles are to be bought for the Government, and it is doubtful whether officers of the United States in using them will or will not be exposed to suits for the infringement of a patent: *Advised* that a bond of indemnity to the Government be taken from parties who offer to furnish such articles, for the protection of the officers. 17 Op. 33.

*See also* CONTRACTS; EXECUTIVE DEPARTMENTS, IV; The Several Executive Departments; Eight-Hour Law.

**PROSECUTION OF CLAIMS AGAINST THE UNITED STATES BY FORMER OFFICER OF AN EXECUTIVE DEPARTMENT.** *See* EXECUTIVE DEPARTMENTS, II, d.

**OFFICERS AND EMPLOYEES.** *See* EXECUTIVE DEPARTMENTS.

**QUARANTINE.** *See* HEALTH AND QUARANTINE. **RAILROADS, INTEREST OF UNITED STATES IN.**

*See* RAILROADS, II, a—Bond-Aided. **PUBLIC LANDS.** *See* PUBLIC LANDS.

**RESERVATIONS.** *See* RESERVATIONS AND PARKS. **ISLANDS OF.** *See* Each Individual Island.

**CHARITABLE INSTITUTIONS, DISTRICT OF COLUMBIA.** *See* DISTRICT OF COLUMBIA, V.

**UNITED STATES COURTS.** *See* COURTS, II.

**CLAIMS OF OR AGAINST THE UNITED STATES.** *See* CLAIMS.

**NOTES, CURRENCY, COINAGE, ETC.** *See* TREASURY DEPARTMENT, V.

**BONDS.** *See* TREASURY DEPARTMENT, VI.

**INTEREST.** *See* INTEREST.

**IMPORTATIONS FOR THE UNITED STATES.** *See* CUSTOMS LAW, XII.

**LACHES.** *See* UNITED STATES, 60.

**NAVIGABLE WATERS.** *See* NAVIGABLE WATERS.

**CONCESSIONS IN FREIGHT RATES TO UNITED STATES.** *See* INTERSTATE COMMERCE, 8.

#### UNITED STATES ATTORNEYS.

1. **Compensation for appearing in suits against officers of the United States.**—In determining the allowances which a district attorney should receive under section 827, Revised Statutes, as compensation for appearing by direction of the Secretary of the Treasury, or of the Solicitor of the Treasury, in suits against officers of the United States for acts done by them, or for the recovery of money received by them and paid into the Treasury, the Secretary of the Treasury may, in his discretion, properly consider what compensation such attorney otherwise annually receives from the Government, and limit the amount to be received by him for the services mentioned, including what he thus otherwise receives, to a sum not exceeding \$10,000 per annum. 15 Op. 277.

Concurred in. 17 Op. 479.

2. **Compensation of United States attorneys for services rendered under section 827, Revised Statutes.**—Sections 299 and 824 of the Revised Statutes have no application to services rendered by United States attorneys under section 827 of the Revised Statutes, compensation for which is to be fixed and allowed in the manner prescribed by the provisions of the latter statute. 20 Op. 709.

3. **Salary United States attorney for southern district of New York.**—Section 770, Revised Statutes, fixing the salary of the United States attorney for the southern district of New

York, and section 836, Revised Statutes, providing for the expenses of his office, do not conflict with each other. 18 Op. 192.

4. *Same.*—Section 770, Revised Statutes, which provides a “salary for all his services,” has been interpreted to mean all official services directed by statute. *Ib.*

5. *Same.*—The statutes which fix the salary and fees for official services required by law do not regulate in any way the payment for unofficial services rendered. Of this character are the services rendered by virtue of section 827, Revised Statutes, which allows to the attorney a sum in addition to his salary. *Ib.*

6. *Same.*—The employment of clerks in the district attorney's office for services not directed by the judiciary act, as far as the amount of payment is concerned, is a matter within the discretion of the Secretary of the Treasury. *Ib.*

7. *Same.*—Whether, in addition to the salary mentioned, the Secretary of the Treasury approves an account taxed in favor of the attorney by the court in the sum of \$4 or \$6 is not a question of legality. *Ib.*

8. *Same.*—Under section 824, Revised Statutes, he has a legal right to increase the pay by \$4,000, and again by \$2,000, and the extent to which he shall exercise that right is a matter of discretion alone. *Ib.*

9. Compensation of United States attorney for southern New York for appearing in cases mentioned in section 827, Revised Statutes.—The Secretary of the Treasury is authorized under section 827, Revised Statutes, to allow reasonable and proper compensation to the United States attorney at New York when he appears in the cases mentioned in that section by the direction of the Secretary or Solicitor of the Treasury. 19 Op. 354.

10. *Same.*—The allowance so made under section 827 is in addition to the annual salary provided by section 770, Revised Statutes, for the ordinary official services of the district attorney. *Ib.*

11. The United States attorney for the southern district of New York is entitled to compensation under section 827, Revised Statutes, for appearing in customs cases, in addition to his salary of \$6,000, which is provided “for all his services” by section 770, Revised Statutes. (18 Op. 192, and 19 Op. 354, followed.) 20 Op. 654.

12. Certain fees claimed by a United States attorney and allowed by the court for special services in defending the Secretary of the Treasury and the Postmaster-General held to be “compensation allowed by law” within the meaning of the third section of the act of June 20, 1874 (18 Stat. 109), and therefore not precluded by that section from being paid. 18 Op. 121.

13. Compensation in internal-revenue cases.—Section 838, Revised Statutes, does not authorize an allowance to be made by the Secretary of the Treasury to a district attorney for services in internal-revenue cases reported to the latter wherein no judicial proceedings have been instituted. 18 Op. 126.

14. A United States district attorney is entitled to receive as compensation for making inquiry and examination under section 838 of the Revised Statutes in a seizure case reported by the collector and afterwards tried or disposed of before the court, such sum as the Secretary of the Treasury shall deem just and reasonable, upon the certificate of the judge; and the receipt of such sum will not preclude him from recovering those regular fees under section 824, Revised Statutes, to which he would otherwise be entitled for service in court. 20 Op. 399.

15. Suits against the United States under section 15 of the customs administrative act of June 10, 1890 (26 Stat. 131), are directly in the line of duty of the district attorneys and fall within section 824, Revised Statutes, and the compensation of district attorneys for their services in defending such suits against the United States, in their respective districts, is limited to the fees prescribed by section 824, Revised Statutes. 20 Op. 228.

16. Prosecution of frauds upon the revenue.—The Attorney-General has no proper authority and should refrain from interfering by directions to district attorneys in the matter of the prosecution and punishment of frauds upon the revenue. 20 Op. 715, note.

17. Accounts for services in instituting proceedings in national-bank cases.—Where a district attorney instituted proceedings for the forfeiture under section 5239, Revised Statutes, of “all the rights, privileges, and franchises” of a national banking association, by direction of the Solicitor of the Treasury, agreeably to section 380, Revised Statutes: *Advised* that the account of the district attor-

ney for his services, upon approval thereof by the Attorney-General, may properly be paid out of the appropriation for the payment of miscellaneous expenses authorized by the Attorney-General. 19 Op. 152.

18. The expenses of proceedings instituted by the Comptroller of the Currency for the forfeiture of the charter of a national banking association, including the fee of the United States attorney for his services in such proceedings, should be defrayed out of the funds or assets of the association. 19 Op. 633.

19. What would be a reasonable fee for the services of the district attorney depends upon the circumstances of the particular case. *Ib.*

20. The compensation of a United States attorney appearing for the receiver of a failed national bank is not regulated by the fee bill prescribed by statute, nor should it be paid by the Government, but out of the funds of the trust. 20 Op. 476.

21. *Same.*—The amount of fees to be allowed a United States attorney in any given case is a matter to be adjusted by the Comptroller in the exercise of a legal discretion under the advice of the Solicitor of the Treasury. *Ib.*

22. *Same.*—Suits and proceedings instituted by the receiver of a failed national bank to enforce the payment of a debt which may be maintained in a State court as well as in a United States court, fall within the provisions of section 380, Revised Statutes, and are therefore to be conducted by district attorneys under the direction of the Secretary of the Treasury. 20 Op. 476.

23. The fee of a United States attorney for services in defending suits brought against certain naval officers is not payable out of the appropriation for "costs of suits" in the act of June 30, 1890 (26 Stat. 189), which relates to the ordinary taxed costs of suits and not to fees of counsel. 20 Op. 49.

24. *Same.*—Such fees must be fixed by the Attorney-General and paid out of the appropriation for the payment of United States attorneys for special services not covered by salary or fees (26 Stat. 409). *Ib.*

25. *Same.*—The authority of the Attorney-General or Department of Justice to employ and pay United States attorneys for services not covered by their salaries and fees is expressly recognized by Congress in section 3 of the act of June 30, 1874 (18 Stat. 109),

and section 299, Revised Statutes, and in the annual appropriations made by Congress for that purpose. *Ib.*

26. *Same.*—District attorneys are entitled to special compensation for their services in examining titles to lands purchased by the United States. 19 Op. 63.

27. The Attorney-General is invested with sole authority to employ and fix their compensation where the performance of such services by them is called for. *Ib.*

28. *Same.*—Expenses thus arising, including office fees for searches, copies of record, etc., being incidental to the purchase of the land, are ordinarily to be paid out of the appropriation made for the purchase. *Ib.*

29. It is not the duty of a United States attorney to advise or defend boards of immigration; but the Secretary of the Treasury is empowered by the act of August 3, 1882 (22 Stat. 214), to employ counsel for those purposes and pay him out of the immigrant fund. 18 Op. 108.

30. District attorneys are not required under the Indian appropriation act of March 3, 1893 (27 Stat. 612, 631), to represent Indians in suits brought by them in States where they do not reside, founded on claims of inheritance from white persons not members of their tribes. 20 Op. 620.

31. The Attorney-General has no authority to give an opinion upon the reasonableness of fees demanded by persons proposing to act as attorneys for Indian litigants. *Ib.*

32. United States attorneys are not authorized, and can not be required by the Navy Department to make examination into the sufficiency of sureties upon official bonds provided for in section 5 of the act of March 2, 1895 (28 Stat. 807). 21 Op. 154.

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#### UNITED STATES BONDS.

PURCHASE OF. *See* TREASURY DEPARTMENT, VI.

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#### UNITED STATES COMMISSIONERS.

1. Use of penalty envelopes.—United States commissioners are "officers of the United States" within the meaning of section 29 of the act of March 3, 1879 (20 Stat. 362), and

as such are entitled to use the penalty envelope provided for by sections 5 and 6 of the act of March 3, 1877 (19 Stat. 335), in the transmission to the Departments at Washington of mail matter relating to their accounts for fees payable by the Government and other official business. 17 Op. 183.

2. The United States court for the Indian Territory is not invested with authority to appoint commissioners; and hence the accounts of commissioners thereby appointed, for issuing writs for the arrest of persons charged with offenses, are inadmissible. 19 Op. 443.

3. Further hearing before.—The Secretary of the Treasury may return the findings in proceedings for remission of penalties under sections 17 and 18 of the act of June 22, 1874 (18 Stat. 189), to the United States commissioner for a further hearing before him upon a claim of newly discovered evidence. 21 Op. 289.

4. The Secretary of the Treasury has no right, in case of an application for a remission of penalty under section 17 of the act of June 22, 1874 (18 Stat. 189), to prosecute a further inquiry into the facts after the United States commissioner has reported his findings in the case under section 18 of that act. 21 Op. 549.

5. United States commissioners are not required to administer oaths to pensioners and their witnesses in the execution of pension vouchers free of charge, the fee for which service is ten cents. 22 Op. 86.

6. Jurisdiction in Chinese-exclusion cases.—In the hearing of cases arising under the Chinese-exclusion laws, the duties of a United States commissioner are judicial rather than ministerial. Consequently the Treasury Department has no authority to issue instructions to United States commissioners as officers charged with the enforcement of these laws. 23 Op. 40.

7. Compensation—Issue of search warrants.—Although no compensation is provided therefor, it is the duty of United States commissioners to issue search warrants in internal-revenue cases when properly applied for. 24 Op. 685.

8. Same.—Section 3462, Revised Statutes, providing for the issue of these warrants, does not state all that must be included in the application therefor. The fifth amendment to the Constitution provides that "no warrant shall issue but upon probable cause

supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized." *Ib.*

9. Same.—If a United States commissioner refuses, on proper application, to issue a search warrant, the facts may be brought by petition or otherwise to the attention of the court appointing such recusant officer for such action as it deems proper. *Ib.*

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#### UNITED STATES COURTS.

*See* COURTS, II.

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#### UNITED STATES DISTRICT ATTORNEYS.

*See* UNITED STATES ATTORNEYS.

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#### UNITED STATES EXPRESS COMPANY.

*See* INTERNAL REVENUE, 72-77.

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#### UNITED STATES MARSHALS.

1. Fees of witnesses in pension cases.—The fees of witnesses subpoenaed under section 184, Revised Statutes, on application of the Pension Bureau, to testify before a United States commissioner, and also the fees of the commissioner by whom their testimony is taken, may properly be allowed out of the judiciary fund (21 Stat. 454). The former should be paid by the United States marshal of the district on the certificate or order of the commissioner; the latter, as in ordinary course, on settlement of the commissioner's accounts at the Treasury. 17 Op. 247.

2. Use of penalty envelope.—A marshal, upon the expiration of his term, ceases to be an officer of the United States, and is not entitled to use the "penalty envelope" in executing process (under section 790, Rev. Stats.) then in his hands. 17 Op. 529.

3. Eviction from the public lands of the District of Columbia.—The marshal of the District of Columbia has no discretion in the performance of the duty imposed upon him by

section 1797, Revised Statutes, as amended by the act of April 28, 1902 (32 Stat. 152), authorizing summary proceedings against persons unlawfully occupying public buildings or grounds in the District, and in so doing has the same right to summon assistance that he has in executing other lawful process. 25 Op. 18.

4. Allowances for travel by United States marshals, provided by section 829, Revised Statutes, are "fees" within the meaning of section 833, Revised Statutes, and should be included in the emolument returns required by the latter section to be made by those officers. 8 Op. 123.

5. In the adjustment of a marshal's emolument account, he may be allowed credit for expenses of travel incurred by himself while serving process. 18 Op. 290.

6. Same.—A deputy marshal may be reimbursed for expenses incurred while serving process, and also be allowed three-fourths of the profits arising from his services. *Ib.*

7. A United States marshal, appointed an agent in pursuance of section 5276, Revised Statutes, to bring back a fugitive criminal from a foreign country, is entitled to receive compensation for this service out of the fund appropriated "for bringing home fugitive criminals," where the amount of the compensation is fixed by regulation before his appointment; otherwise he is entitled to be paid his expenses only. 19 Op. 121.

8. The elements necessary to justify the payment of compensation to an officer of the Government for additional services are, that they shall be performed by virtue of a separate and distinct appointment authorized by law, that such services shall not be services added to or connected with the regular duties of the place he holds, and that a compensation whose amount is fixed by law or regulation shall be provided for their payment. *Ib.*

9. Powers of the marshal for the Indian Territory.—The marshal appointed under the act of March 1, 1889 (25 Stat. 783), providing for the organization of a court in the Indian Territory, has the same powers in that Territory which a sheriff in Arkansas has in his own county, and his power to appoint deputies is limited only by the necessity of the case. 19 Op. 293.

10. Same—*Posse comitatus*.—He may call to his assistance, in the execution of the law,

civilians, but not the military forces of the United States, the use of the latter as a *posse comitatus* being forbidden by section 15 of the act of June 18, 1878 (20 Stat. 152). *Ib.*

11. Same.—It is competent for the President, under section 5298, Revised Statutes, to direct the military forces to render the marshal such aid as may be necessary to enable him to maintain the peace and enforce the laws of the United States in that Territory. *Ib.*

12. Writs issued by commissioners appointed by the United States court for the Indian Territory are no protection to the marshal for anything he may do under them, nor is he entitled to compensation for serving them. 17 Op. 443.

13. Deputy marshals.—An Indian agent is not prohibited by statute from acting as a deputy marshal. 20 Op. 494.

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#### UNITED STATES MILITARY ACADEMY.

See MILITARY ACADEMY, WEST POINT.

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#### UNITED STATES NAVAL ACADEMY.

See NAVAL ACADEMY.

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#### UNITED STATES NAVAL ASYLUM AT PHILADELPHIA, PA.

Administration of estate of an inmate—Jurisdiction of State of Pennsylvania.—A beneficiary and resident in the United States Naval Asylum at Philadelphia died in the asylum in August, 1888, intestate, leaving personal effects, which were turned over to the proper officer at the asylum agreeably to regulations prescribed by the Secretary of the Navy under section 4811, Revised Statutes. Letters of administration were granted on the estate under the law of Pennsylvania by the State court; and an inquisition in proceedings in escheat was had in the State court, whereby his estate purported to be escheated to the Commonwealth of Pennsylvania. The State in 1834 ceded to the United States jurisdiction over the land occupied by the asylum: *Advised* that the proceedings of the State

court granting administration of the estate, and escheating the same, were void for want of jurisdiction, and that neither the administrator nor the escheator has any right to the possession of such estate. 19 Op. 247.

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#### UNITED STATES NOTES.

*See* TREASURY DEPARTMENT, VI.

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#### UNITED STATES PENSION AGENTS.

*See* POSTAL SERVICE, 145.

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#### UNITED STATES REPORTS.

DISTRIBUTION. *See* COURTS, 7-16.

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#### UNITED STATES SENATE.

*See* CONGRESS, III.

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#### UNITED STATES SHIPPING COMMISSIONERS.

*See* SHIPPING COMMISSIONERS.

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#### UNIVERSAL POSTAL UNION CONGRESS.

The fund appropriated by the act of July 5, 1884 (23 Stat. 157), to defray the expenses of delegates to the Universal Postal Union Congress at Lisbon, Portugal, is subject to the restrictions as to *advances* contained in section 3648, Revised Statutes. 18 Op. 93.

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#### UNMAILABLE MATTER.

*See* LOTTERY.

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#### UNOFFICIAL SERVICE.

*See* DIPLOMATIC AND CONSULAR OFFICERS, 19.

#### USELESS PAPERS, DISPOSAL OF.

*See* TREASURY DEPARTMENT, 19.

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#### UTAH.

1. Qualification of registration and election officers.—Persons appointed under section 9 of the bigamy act of March 22, 1882 (22 Stat. 32), to perform the duties of the registration and election offices, thereby declared vacant, have authority to administer all oaths which the former incumbents of these offices were authorized to administer in the performance of the duties thereof. 17 Op. 314.

2. The Utah Commission, appointed under the act of March 22, 1882 (22 Stat. 30), have no duties or powers as regards the school meetings in Utah Territory. 18 Op. 94.

3. Voting at meetings of taxpayers called to fix the rate of taxation for school purposes is not voting at an "election" within the meaning of that act. Hence, polygamists may vote at such meetings, provided they are property taxpayers and residents of the school district in which the meeting is held. *Ib.*

4. The superintendent of district schools, auditor of public accounts, and treasurer of Utah Territory should, in conformity to the organic law of the Territory, be appointed by the governor, with the advice and consent of the legislative council. The Territorial statutes, in so far as they require such officers to be *elected*, are in conflict with the organic law and void. 18 Op. 193.

5. The commissioners to locate university lands, created by the Territorial legislature under the powers given by the act of Congress of February 21, 1855 (10 Stat. 611), should be elected in the manner prescribed by the Territorial statute. *Ib.*

6. Officers in the Territory of Utah who were commissioned and holding office previous to the passage of the act of March 3, 1887 (24 Stat. 635), are not required to take the oath prescribed by the twenty-fourth section of that act. 18 Op. 595.

7. The provision of that section making such oath a "condition precedent to hold office in or under said Territory" applies as well to officers thereafter appointed by the General Government



as to those thereafter appointed by the Territorial government or elected in the Territory. *Ib.*

#### UTE INDIANS.

DEPREDAATION CLAIMS. *See* CLAIMS, 32.  
RESERVATION. *See* INDIANS, 32, 39, 40.

#### VACANCY IN OFFICE.

*See* OFFICE AND OFFICERS, II.

#### VERMONT.

The invasion of the State of Vermont in 1864 was really an invasion of the United States. 20 Op. 134.

*See also* DIRECT TAXES, 5, 6.

#### VESSELS.

1. **Tugboat not a passenger vessel.**—A tugboat used for towing vessels to and fro which is accustomed to take on board the masters of the vessels thus towed and sometimes one or more of the crew and carry them from the shore to their vessels, or vice versa, is not a "passenger vessel" or "a vessel carrying passengers" within the provisions of sections 4464 to 4469, Revised Statutes. 17 Op. 599.

2. **The owner or consignee of a vessel arriving from a foreign port is entitled under section 2981, Revised Statutes, to a lien for freight on merchandise imported on such vessel, even though the merchandise is intended for exportation.** 21 Op. 38.

3. **Fees from seamen.**—Section 4609, Revised Statutes, which forbids the demanding or receiving from any seaman or other persons seeking employment as a seaman, any remuneration for providing him with employment other than the fees authorized by law, does not extend to seamen employed on vessels engaged in the coasting trade generally. 21 Op. 284.

4. **Classification of certain passengers as immigrants.**—Under the act of March 3, 1893 (27

Stat. 569), immigrants can not be classed as such according to the parts of the vessel they occupy, as the word "immigrant" undoubtedly embraces persons who may be, and sometimes are, in the cabins. 22 Op. 460.

5. **Same.**—The list of immigrants required by section 1 of this act, should be made before departure from a foreign country. *Ib.*

6. **Spanish war vessels wrecked in battle off the coast of Cuba.**—The Spanish vessels wrecked in battle by the naval vessels of the United States during the war with Spain, and now lying along the coast of Cuba, are the property of the United States. 23 Op. 76.

7. **Same—Disposition.**—That island being now temporarily within the jurisdiction of the United States, the Secretary of the Treasury, under section 3755, Revised Statutes, has power to make such provision for the sale or other disposition of such wrecked vessels as he may deem necessary. *Ib.*

8. **Same.**—Section 3755 applies as well to wrecks which are the property of the United States as to the vessels of private owners which have been wrecked, abandoned, or become derelict. *Ib.*

9. **Naval vessels—Materials and labor.**—The act of August 13, 1894 (28 Stat. 278), entitled "An act for the protection of persons furnishing materials and labor for the construction of public works," relates to contracts for the construction of public buildings, fortifications, river and harbor improvements, etc., which can only be erected upon land, and are commonly understood under the designation "public works." The act does not refer to contracts for the construction of naval vessels. 23 Op. 174.

10. **Nationalization of Porto Rican Vessels.**—Section 12 of the act of June 26, 1884 (23 Stat. 56), which provides that consular officers rendering official services to American vessels and seamen shall furnish the master of every such vessel with an itemized statement of such services performed and make a report thereof to the Secretary of the Treasury, and for such services shall receive from the Treasury Department the same compensation that they would have received prior to the passage of that act, applies equally to services rendered to nationalized Porto Rican vessels. 23 Op. 414.

11. **Same.**—The ninth section of the Porto Rican organic act of April 12, 1900 (31 Stat.

79), provides for the nationalization of all vessels owned by the inhabitants of Porto Rico on April 11, 1899. Such nationalization placed those vessels upon the same footing as all other privileged American vessels, and conferred upon them the benefits of the act of 1884. *Ib.*

**12. Boarding of vessels—Secretary of Commerce and Labor.**—The execution of the act of March 31, 1900 (31 Stat. 58), entitled "An act concerning the boarding of vessels," has been transferred by section 10 of the act of February 14, 1903 (32 Stat. 825), from the Secretary of the Treasury to the Secretary of Commerce and Labor. 25 Op. 51.

*See also* SHIPPING; STEAMBOAT-INSPECTION SERVICE; LIENS, 4, 5.

**CLEARANCE DENIED FOR VIOLATION OF CUSTOMS LAWS.** *See* CUSTOMS LAW, 449-450. **UNSEAWORTHY IN A FOREIGN PORT.** *See* DIPLOMATIC AND CONSULAR OFFICERS, 15-18.

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#### VETO.

*See* PRESIDENT, 84.

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#### VIRGINIA.

**1. State harbor commissioners—Jurisdiction.**—The State of Virginia, through its legislature, having duly relinquished jurisdiction over the lands belonging to the United States at the navy-yard at Norfolk, upon which it is proposed to construct a dry dock, the State board of harbor commissioners for the port of Norfolk and Portsmouth is without authority to require the submission to and approval by it of the plans of the contemplated improvement, although such improvement be within the harbor line established by that board. The authority of the United States over that harbor is paramount and absolute. 19 Op. 50.

**2. The powder officer for the harbor of Norfolk, Va.,** appointed under the act of March 3, 1880, of that State, has no authority over powder belonging to the Federal Government, and the United States is not liable for any charge for services performed by him under the authority of that law. 25 Op. 234.

**3. Release of cruiser Galveston from possession of State court.**—The Attorney-General

defers answering the question as to the right of the Secretary of the Navy, under the direction of the President, to employ the military forces of the Government to obtain possession of the cruiser *Galveston*, in course of construction under contract with the Wm. R. Trigg Company, of Richmond, Va., which company has gone into the hands of a receiver appointed by the chancery court of Virginia, for the reason that a method of procedure in such cases is provided for by section 3753, Revised Statutes, and occasion for the exercise of this power is not likely to arise if the stipulation authorized by that section is filed. 24 Op. 679.

**4. Same.—No instrumentality of the Government** may be taken into custody and held under any adverse authority whatever. This applies as well to an instrumentality in process of creation as to one already completed. *Ib.*

**5. Same.—The United States is entitled to the undisputed possession and control of its property and of property in which it is interested to the extent of that interest, and this possession and control are exempt from the process of every court.** *Ib.*

**6. Same.—The word "stipulation,"** as used in section 3753, Revised Statutes, denotes an undertaking in the nature of bail, and is analogous to the "stipulation for value" under present admiralty practice, the measure of the Government's obligation being limited in section 3754, Revised Statutes, to "the value of the interest of the United States in the property in question." *Ib.*

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#### VOLUNTEER ARMY.

*See* ARMY, III.

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#### VOLUNTEER OFFICERS OF THE NAVY.

TRANSFERRED TO THE REGULAR NAVY. *See* NAVY, 70.

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#### VOLUNTEER PENSION BRANCH.

*See* WAR DEPARTMENT, 108.

**VOUCHER.**

See **INDIAN AGENTS**, 7, 8.

**WAKEFIELD, VA.**

(Birthplace of George Washington.)

**Construction of wharf at.**—The Secretary of State can not lawfully under the terms of the joint resolution of Congress approved February 25, 1893 (27 Stat. 756), authorize the construction of a wharf at Wakefield, Va., different in character from that specified in the resolution, even if from a change of circumstances the construction of that sort of wharf with that appropriation has become impracticable. 20 Op. 653.

**"WANDERER" (Vessel.)**

See **CLAIMS**, 80.

**WAR.**

1. The United States had authority to take possession of and use real estate during the period of the war for war purposes, but had not the authority to divest the title of the owner. They had not the power to retain possession of real estate originally taken for war purposes beyond the period during which the occasion for the taking continued. 21 Op. 382.

2. Notwithstanding the signing of the protocol and the suspension of hostilities, a state of war still exists (August 24, 1898) between this country and Spain, as peace can only be declared pursuant to the negotiations between the authorized peace commissioners. 22 Op. 190.

3. The suspension of hostilities provided for by the protocol of agreement between the United States and Spain signed August 12, 1898, is not tantamount to the termination of the war, but creates only an interval in the war and supposes a return to it. 22 Op. 258.

4. Hostilities between nations suspend intercourse and deprive citizens of the hostile nations of rights of an international character previously enjoyed. 22 Op. 268.

5. So long as a state of war exists between Spain and the United States, Spanish subjects

have no right to the privilege of copyright conferred upon Spanish citizens by proclamation prior to the declaration of war. *Ib.*

6. Property of a neutral, permanently situated within the territory of an enemy, is, from its situation, liable to damage from the lawful operations of war, and no compensation is due for such damage. 22 Op. 315.

**WAR DEPARTMENT.****I. In General, 1-7.****II. Officers.****a. Secretary of War.**

1. Generally, 8-36.

2. Contractors, 37-39.

3. Courts Martial, 40-42.

4. Reservations, etc.—License—Use, 43-50.

5. Dock and Harbor Lines, 51-53.

6. Navigable Waters—Obstructions, etc., 54-60.

7. Bridges, Canals, 61-86.

8. River and Harbor Improvement, 87-95.

b. Chief Clerk, 96, 98.

c. Generally, 99.

**III. Bureaus or Divisions, 101-113.****IV. Clerical Forces, 114-116.****I. Generally.**

1. **Appropriation for artificial limbs—Expenditure.**—The appropriation of \$175,000 for artificial limbs, etc., made by the act of March 3, 1881 (21 Stat. 435, 447), should be expended under the direction of the War Department. 17 Op. 233.

2. **Contracts.**—A clause contained in contracts of the War Department providing for future modifications of the contract, set out, and held to be reasonable and proper, and that a modification of such a contract, which does not prejudice the interests of the Government or violate any statutory provision, is not such a new contract as must be preceded by an advertisement for proposals from bidders. 21 Op. 207.

3. **Correction of records—Title to land.**—Claimant having furnished the War Department sufficient proof that, for a period of more

than twenty years next before the passage of the act of March 3, 1899 (30 Stat. 1346), he was in the actual and uninterrupted possession of and had paid the taxes upon lot 5 in square 1113 in the city of Washington, is entitled, under section 2 of that act, to have the records of the War Department so corrected as to show the title to said lot to be in him. 23 Op. 21.

**4. Maintenance of telegraph line—Infringement.**—As a matter of power, it is within the legitimate function of the War Department to maintain a telegraph line between Santiago and Havana, Cuba, and to transmit private messages over it, although the transaction of business of that nature may be in conflict with the vested rights of the International Ocean Telegraph Company. 23 Op. 425.

**5. Same—War power.**—In the maintenance and operation of such line the military officers of the United States in Cuba are exercising a war power under a military occupation of territory wrested by arms from a belligerent. *Ib.*

**6. Government for Philippine Islands—A branch of the War Department.**—Under the instructions of the President to the Philippine Commission of April 7, 1900, and the Executive order of June 21, 1901, the powers and duties thereby conferred upon the Commission and the civil governor were to be exercised under the direction and control of the Secretary of War, and the act of July 1, 1902 (32 Stat. 691), in ratifying and approving the instructions and order referred to, continued this relation. The reasonable inference is, therefore, that until otherwise provided, Congress intended that the government for the Philippine Islands should be regarded as a branch of the War Department. 24 Op. 534.

**7. Same—Penalty envelopes.**—The penalty envelopes used for the transmission of official mail from those islands should, accordingly, bear the indorsement of the War Department. *Ib.*

*See also* SECRETARY OF WAR.

## II. Officers.

### a. Secretary of War.

**8. Assignments to cavalry or infantry.**—The Secretary of War is authorized to assign to

cavalry or infantry recent graduates, non-commissioned officers, and civilians, although "additional" second lieutenants remain in the engineers and artillery, and no vacancies exist in the last-named branches. 20 Op. 149.

**9. Bids and bonds—Waiver of formal defects.**—In specific cases the Secretary of War is authorized to waive formal defects in bids and bonds in order to secure the public advantage resulting from competitive bidding. 21 Op. 469.

**10. Breakwater at San Pedro, Cal.**—The Secretary of War is authorized to award a contract for the construction of a breakwater at San Pedro, Cal., in accordance with the recommendation and the plans and specifications adopted by the board of engineers appointed under the provisions of that portion of the river and harbor act of June 3, 1896 (29 Stat. 213), which provides for a deep-water harbor for commerce and refuge at Port Los Angeles or San Pedro, Cal., the location of the harbor to be determined by the board. 22 Op. 139.

**11. Same.**—The Secretary of War is not called upon to make further plans, specifications, or estimates for other work not included within the plans and specifications adopted by the board. *Ib.*

**12. Building line, Georgetown.**—The approval of the Secretary of War is required for projections beyond the building line in that part of the city of Washington formerly known as Georgetown, and this notwithstanding the fact that the ownership of the fee in the streets is not in the United States. 22 Op. 9.

**13. International cables.**—The Secretary of War is justified in using force to remove or disrupt any cable which may be laid between the United States and any other country without Congressional authority therefor, and in disregard of his instructions and against his will. 22 Op. 515.

**14. Claims of officers, etc.—Private property destroyed in military service.**—The duty of the Secretary of War in the case of a claim under the act of March 3, 1885 (23 Stat. 350), providing for the settlement of claims of officers and enlisted men of the Army for loss of private property destroyed in the military service, is limited to the determination of whether the property was "reasonable, useful,

necessary, and proper" for the claimant. 19 Op. 693.

15. **Same.**—Whether the loss happened under the circumstances described in the statute, and comes within the provisions thereof, is a question for the determination of the proper accounting officers of the Treasury, and so does not appertain to the administration of the War Department. *Ib.*

16. **Customs.**—The discretion committed to the Secretary of War with reference to the admission of certain materials free of duty by the act of June 6, 1896 (29 Stat. p. 260, first paragraph), is sufficiently broad to embrace and assume such purchases abroad made by contractors as appear to him to be proper. 22 Op. 98.

17. **Designation of clerk to superintend construction of building**—Additional compensation.—It was competent for the Secretary of War, under the act of June 16, 1880 (21 Stat. 260), providing for the construction of a building at the corner of Seventeenth and F streets, Washington, D. C., to designate a clerk from the office of the Chief of Engineers to take charge and superintend the work, and to compensate him from the fund appropriated, his salary and services as clerk having been suspended during the period. The case is not within section 1765, Revised Statutes, there being no "additional pay, extra allowance, or compensation" received by said clerk. 17 Op. 321.

18. **Employment of an attorney**, prior to the act of June 20, 1870 (16 Stat. 162), to defend certain parties against whom suits were brought, in the result of which the Government was interested. 18 op. 124.

19. The Secretary of War is not authorized under the provisions of the act of July 29, 1892 (27 Stat. 326), to approve a survey of the Great Falls Electric Railway Company over the lands of the Washington aqueduct, where the inner rail of said railway will be less than the required distance from the point specified in said act. 21 Op. 294.

20. **Medals of honor—Surrender of old medals.**—It is not within the authority of the Secretary of War, in replacing the medals issued to officers and privates for gallantry in action, under the joint resolution of July 12, 1863 (12 Stat. 623), and section 6 of the act of March 3, 1863 (12 Stat. 751), as provided in the act of April 23, 1904 (33 Stat. 274), to

allow a particular grantee, who is entitled to a new medal, to receive it and at the same time retain the old medal in his possession. 25 Op. 529.

21. **Same.**—It is optional with the holder of a medal whether he shall surrender his old medal for the new. *Ib.*

22. **Portage railway at the Cascades, Oregon.**—The Secretary of War is not authorized by the joint resolution of March 3, 1891 (26 Stat. 1116), to construct a portage railway at the Cascades, Oregon, and turn the same over after completion to the State of Oregon for operation, on certain conditions. 20 Op. 93.

23. **Same.**—Such an act would give the State of Oregon not merely a revocable license, but a vested right to operate the railway and derive revenue therefrom, and consequently is beyond the power of the Secretary of War, not having been authorized by the resolution in question. *Ib.*

24. **Government property—Use of.**—The Secretary of War has no power to turn over Government property to States or individuals to be used for any purpose not authorized by some act of Congress. 20 Op. 93, 96.

25. **Boat railway at The Dalles Rapids—Condemnation of land needed.**—The Secretary of War has full authority under the river and harbor act of August 18, 1894 (28 Stat. 359), and the act of April 24, 1888 (25 Stat. 94), to condemn whatever land may be needed for the construction of the boat railway provided for in the former act. 21 Op. 221.

26. **Same.**—If a change in the location of an existing railway is a necessity in the building of said boat railway, the acquisition by the Secretary of War of the necessary land to make such change is merely an incident to the enterprise intrusted to him. *Ib.*

27. **Payment.**—Where funds in the hands of the Secretary of War are involved in a controversy between parties, pending under different forms of procedure in different jurisdictions, they should be retained by him until a final adjudication of the whole matter by the tribunal to which the parties may last resort. 21 Op. 447.

28. **Pneumatic gun carriage.**—The Secretary of War is not authorized by the act of August 1, 1894 (28 Stat. 214), providing for the purchase of a 10-inch pneumatic disappearing gun carriage upon the same conditions relative to payments, etc., as are embodied

in the contract for the Gordon carriage—to enter into a supplemental contract for the payment of a bonus or premium for each shot per hour the carriage is capable of sustaining above the number required by the original contract, for the reason that the whole amount appropriated for the pneumatic carriage was expended in the original contract, and there is no authority to contract for further expenditures. 21 Op. 495.

**29. Post traders—Appointment—Removal.**—While under section 3 of the act of July 24, 1876 (19 Stat. 100), a post trader can not be appointed by the Secretary of War excepting on the recommendation of a council of administration appointed by the commanding officer of the post, yet he may be removed by the Secretary without the concurrence of the council of administration and commanding officer. 17 Op. 517.

**30. Promotion of an enlisted man who holds certificate of eligibility.**—The Secretary of War has no authority to make a regulation limiting to a specific time, expiring on a given date, the right of promotion of an enlisted man who holds a certificate of eligibility provided for by the act of July 30, 1892 (27 Stat. 336). 22 Op. 54.

**31. Same.**—A regulation can not be promulgated requiring a successful candidate who holds such certificate of eligibility to undergo a second examination after a specified time, the proviso in section 3 of the act (27 Stat. 336) relative to two examinations being intended to give a nonsuccessful competitor an opportunity to retrieve himself by a reexamination. *Ib.*

**32. Same.**—The Secretary of War is the regular constitutional organ of the President for the administration of the military establishment of the nation, and as such the rules and orders publicly promulgated through him must be received as acts of the Executive, and are binding upon all within the sphere of his legal and constitutional authority. *Ib.*

**33. Soldiers' Home—Approval of recommendations of the Board of Commissioners of.**—The Secretary of War is invested with a discretionary power to approve or disapprove recommendations made by the Board of Commissioners of the Soldiers' Home under section 4816, Revised Statutes. 17 Op. 449.

**34. The Secretary of War is charged with the custody, care, and protection of the Washington Monument.** 21 Op. 215.

**35. Yukon River region appropriation.**—The Secretary of War has power to settle and pay from the appropriation for the relief of people in the Yukon River region, act of December 18, 1897 (30 Stat. 226), the claims of certain contractors entered into pursuant to that act, for the transportation of supplies, the expedition having been abandoned by the Secretary because found to be unnecessary. 22 Op. 437.

**36. Same.**—Unless authorized by Congress the head of a Department has no power to adjust and pay claims for unliquidated damages, even when arising from the breach of a contract, except where such claims are for work and labor done or materials furnished under a contract silent as to price and the amount thereof unliquidated. *Ib.*

AUTHORITY TO APPROVE OR DISAPPROVE LOCATION OR PLANS FOR BRIDGES. *See* NAVIGABLE WATERS, III, a.

AUTHORITY TO GRANT LICENSE TO CONSTRUCT IRRIGATING DITCH THROUGH A MILITARY RESERVATION. *See* RESERVATIONS AND PARKS, 15.

EXTENSION OF TIME FOR COMPLETION OF WASHINGTON AQUEDUCT TUNNEL. *See* DISTRICT OF COLUMBIA, 54.

## 2. Contractors.

**37. Release of, because of unforeseen difficulties.**—The Secretary of War has no authority to discharge a dredging company from the performance of its contract with the United States to remove and deposit dredged matter in such places as the United States engineer officer shall direct, because of unforeseen difficulties in selling or even in disposing of the material excavated, which an officer of the Engineer Corps had represented could be disposed of at a stated price per cubic yard. 17 Op. 368.

**38. Remission of penalties.**—Where penalties are imposed under the terms of a contract between the War Department and a contractor for delay in completing the work, but the contract was performed in all other respects and no actual damage has resulted from the delay, the Secretary of War may remit the forfeiture and order the sum withheld paid to the contractor. 21 Op. 27.

**39. Continuance of employment after appropriation is exhausted.**—The Secretary of War is without authority to continue the employ-

ment of certain contractors, or to supervise their work, after the appropriation under which they are employed is exhausted, and their contract with the Government, so far as authorized by Congress, has been exhausted. 21 Op. 244.

### 3. Courts-Martial.

**40. Admissibility of evidence.**—It is not the official duty of the Secretary of War to give to the judge-advocate, and thus to the court-martial, an opinion as to the admissibility of certain evidence in the trial of a case before the court, nor as to the construction of a statute. Such questions should be left to the decision of the court-martial itself. 17 Op. 54.

**41. Amendment of record.**—The Secretary of War is without authority to correct, amend, or to take any action inconsistent with the record of a court-martial duly convened upon a proper and sufficient charge. 23 Op. 23.

**42. Same.**—This power is inherent in a court-martial; but such correction or amendment can be made only when the court-martial is in session, and when at least five of the members of the court who acted upon the trial are present, and then in the presence of the judge-advocate. *Id.*

### 4. Reservations, etc., Licenses or Permission to Use.

**43. Roman Catholic chapel at West Point.**—The Secretary of War has no power to accept for the Government a donation of a building to be erected upon a military reservation for its use in perpetuity by Roman Catholics. 21 Op. 537.

**44. Bethel reading room, army reservation on Ship Island.**—The Secretary of War has no authority to grant permission for the erection of a bethel, reading room, and library within the army reservation on Ship Island. (21 Op. 537 followed). 21 Op. 565.

**45. Fort Sill Military Reservation.**—The Secretary of War may set apart such portion of the Fort Sill Military Reservation as may be required for the erection of the necessary buildings to be used as a mission and school for the Apache prisoners of war, and may make such rules and regulations as shall be deemed suitable and necessary to control the methods and operations of the persons engaged in that work. 22 Op. 303.

**46. Licenses.**—Long-continued exercise by the Secretary of War of the power to grant revocable licenses for the temporary occupation of portions of Government reservations for a quasi public use, and the open and notorious use of such reservations by such licensees without legislative objection from Congress, or the adoption of any legislative rule on the subject, implies the tacit assent of Congress to this custom. 22 Op. 240.

**47. Same.**—The right to issue such a license can not be maintained upon any ground except the benefit to the public interests, and can not be used as a basis for granting, under the guise of a temporary license, a permanent right to maintain a railroad. It confers no contractual right upon the licensee. *Id.*

**48. License for construction of wharf at San Juan, P. R.**—Prior to the passage of the Porto Rican act of April 12, 1900 (31 Stat. 77), the Secretary of War had authority, under section 10 of the river and harbor act of March 3, 1899 (30 Stat. 1151), to issue a license for the building and maintenance of a wharf in the harbor of San Juan, P. R., and the rules imposed by section 3 of the resolution of May 1, 1900 (31 Stat. 715), upon the grant of franchises by the executive council of that island do not extend to an antecedent license granted by him. 23 Op. 552.

**49. Same.**—Operative until revoked.—The power to revoke the license so granted is vested in the Secretary of War, and so long as it is unrevoked the rebuilding of the wharf under such license is subject to his control and supervision, and not to that of the executive council. *Id.*

**50. Public lands of Porto Rico—Temporary use of.**—The grant of a right or privilege to make temporary use of a portion of the public lands in Porto Rico, to exist in perpetuity, or as long as the conditions of the grant are fulfilled, is beyond the power of the Secretary of War, and ought not to be made. 22 Op. 545.

### 5. Dock and Harbor Lines.

**51. Dock line—Proceedings to enjoin construction of.**—It is the duty of the War Department to direct proceedings to be taken to enjoin the construction of a "dock line" which will obstruct, encroach upon, or interfere with harbor improvement. 17 Op. 279.

52. The Secretary of War has the power to establish a harbor line for the Tacoma Harbor or modify the existing one in the harbor of Seattle, as he shall determine, if in his opinion the interests of commerce and navigation so require. 22 Op. 501.

53. Harbor lines—Establishment.—The determination of the question as to whether the establishment of a certain harbor line is essential to the preservation and protection of a harbor rests, under section 12 of the act of September 19, 1890 (26 Stat. 453), in the discretion of the Secretary of War alone, and his judgment in the matter is final and conclusive until subsequently modified by himself. 20 Op. 740.

#### 6. Navigable Waters—Obstructions, etc.

54. Navigable waters of the United States.—The control and supervision of the navigable waters of the United States is placed in the Secretary of War. 21 Op. 518.

*See also* NAVIGABLE WATERS, I, b.

55. Hudson River near Troy and Albany.—The authority conferred upon the Secretary of War by the act of June 29, 1888 (25 Stat. 209), does not extend to the waters of the Hudson River as far distant from New York Harbor as Troy, Albany, and New Baltimore. 19 Op. 317.

56. Deposit of ballast in New York Harbor.—The Secretary of War has no power to prevent the deposit of ballast in New York Harbor at a distance of more than 3 miles from the shore at low-water mark. 20 Op. 293.

57. Depositing of refuse matter into a river—Duty to designate portion of river.—It is the duty of the Secretary of War to act upon a petition to have designated the portion of a river within which refuse matter may be discharged, in accordance with the provisions of section 6 of the act of August 18, 1894 (28 Stat. 363), although the navigability of the river will not be affected. 21 Op. 305.

58. Same.—The Secretary of War, in deciding this question, should be governed only by considerations affecting the navigation of the river, or which may affect future navigation. *Id.*

59. Bar forming in Flushing Creek opposite mouth of sewer.—Although the Attorney-General can not determine without consider-

ing questions of fact whether or not a bar in Flushing Creek formed opposite the mouth of a sewer and offering an obstruction to navigation is such a case as comes within the exception provided in section 6 of the act of August 17, 1894, the Secretary of War is not precluded from taking such action inviting the attention of the town authorities of Flushing to the matter as may be advisable. 21 Op. 594.

60. Obstructions to navigation—Removal of wrecks.—The acts of June 14, 1880 (21 Stat. 197), and August 2, 1882 (22 Stat. 208), which authorize the Secretary of War to remove sunken vessels or craft which obstruct the navigation of a "navigable" water of the United States do not apply to the coastal waters of Cuba, as such waters do not become waters of the United States by reason of the temporary jurisdiction of the United States over that island. 23 Op. 76.

#### 7. Bridges, Canals.

61. The question as to whether a bridge over a navigable water of the United States is an "unreasonable" obstruction to navigation must be determined in the first instance by the Secretary of War, whose decision is probably subject to review by the courts. 19 Op. 676.

62. Bridges—Disapproval of plans.—The Secretary of War has power under the provisions of the acts of December 17, 1872 (17 Stat. 398), and February 14, 1883 (22 Stat. 414), authorizing and regulating the construction of bridges over the Ohio River, to disapprove of the plans of such bridges where he is of the opinion that they would unduly obstruct the navigation of the river. 18 Op. 512.

63. Disapproval of plans.—The Secretary of War should not approve the plans for the bridge authorized by the act of March 3, 1887 (24 Stat. 501), to be built across the Missouri River between the cities of Omaha and Council Bluffs, unless they provide for a structure of sufficient strength to bear trains of cars drawn by locomotives. 19 Op. 29.

64. Bridges not authorized by Congress.—The authority conferred upon the Secretary of War by section 7 of the river and harbor act of 1890 (26 Stat. 454), to approve or disapprove of the location and plans of bridges, not authorized by an act of Congress, over navigable waters of the United States, is limited to the cases of bridges authorized by State law to



be erected over waters the navigable portions of which lie wholly within the limits of the State. 20 Op. 488.

65. *Same.*—He is not authorized to approve or disapprove the location and plan of the bridge proposed to be erected over the Monongahela River at Bessemer, Pa. *Ib.*

66. The Secretary of War is authorized by section 3 [7] of the river and harbor act of 1892 (27 Stat. 110) to approve or disapprove the location or plans of a bridge duly authorized by a State legislature over waters wholly within the limits of a State. 20 Op. 479.

67. Where a State has granted authority to construct a bridge over a navigable river and the location and plan has been approved by the Secretary of War, the question whether the purchasers of such right are authorized to proceed is one which does not concern the Government. 21 Op. 293.

68. The Mississippi River in Minnesota, both above and below the Falls of St. Anthony, is a navigable river, not wholly within the limits of any particular State, and can not be bridged without the permission of the United States, expressed through the approval of the plans by the Secretary of War. 22 Op. 52.

Opinions of November 19, 1892 (20 Op. 488), and January 18, 1896 (21 Op. 293), approved. *Ib.*

69. Approval of plans and location.—The Secretary of War would not be prohibited from approving the plan and location of a bridge across boundary waters if acts of authorization were passed by the legislature of the States interested. 22 Op. 332.

70. *Same.*—Clause 2 of the proviso to section 3 of the act of July 13, 1892 (27 Stat. 100), does not limit the authority of the Secretary of War to grant permission for the construction of a work of this character to navigable waters which lie wholly within the limits of one State. *Ib.*

71. Rock Island Bridge—Power to grant revocable license.—The Secretary of War has no authority under existing legislation to grant a revocable license to the Davenport and Suburban Street Railway Company, or to any other street railway company, to use jointly with the Tri-City Railway Company the lower portion of the Government bridge across the Mississippi River, connecting the cities of Rock Island, Ill., and Davenport, Iowa. 25 Op. 389.

72. *Same.*—*Suggested*, that since the question is not free from doubt such permission might be granted in order that the matter may be brought before the courts for judicial determination. *Ib.*

73. Bridge across Potomac—Approval of location.—It is not the duty of the Secretary of War under the act of February 28, 1891 (26 Stat. 789), incorporating the Washington and Arlington Railroad Company, to select or approve of the exact location of the bridge to be built across the Potomac River, but rather to approve the plans, specifications, and materials used and the manner of construction of such bridge. 20 Op. 549.

74. *Same.*—It is his duty to refuse to approve the plans for the construction of a bridge at a place so far removed from the point indicated in the act as to be plainly beyond its scope. *Ib.*

75. *Same.*—He has authority, however, to relocate the bridge as requested by the company, provided the place designated is a reasonable compliance with the terms of the act. *Ib.*

76. Repairs.—In expending the appropriation in the act of March 2, 1889 (25 Stat. 963), "for repairs to draw pier of the Rock Island Bridge," the Secretary of War is not required to use all of the money appropriated or more than is necessary to do the work properly, bearing in mind that temporary repairs are not always most economical or expedient. 19 Op. 375.

77. *Same.*—In case of doubt as to the necessity of any expenditure, due weight should be given to the judgment of the law-making power as expressed in the appropriation. *Ib.*

78. *Same.*—The refusal of the Chicago, Rock Island and Pacific Railroad Company to contribute to the expense incurred any sum in excess of one-half of what would be necessary to place the existing pier in as nearly as practicable the condition it was in when the bridge was completed, does not relieve the Secretary of War of his duty to make the repairs directed by the above-named act. *Ib.*

79. Alteration of.—It is the duty of the Secretary of War, under section 4 of the act of September 19, 1890 (26 Stat. 453), to ascertain whether, in his judgment, the Canal street bridge across the south branch of the Chicago River is an unreasonable obstruction to the free navigation of that river, and, in

case he decides that it is, to proceed as directed by that statute and require such an alteration of the bridge as will render navigation through and under it safe, easy, and unobstructed. 20 Op. 101.

**80. Same.**—Inasmuch as the plans for the proposed excavation in said river have not as yet been submitted to the Secretary of War for his approval and authorization, he is not now required by law to give the proceedings consideration. *Ib.*

**81. Can not require change without compensating owner.**—The Secretary of War is not authorized under the provisions of section 4 of the act of September 19, 1890 (26 Stat. 453), to require changes to be made in the bridge of the **Baltimore and Ohio Railroad Company over the Ohio River** at the expense of the owner without compensation, as this act applies only to such bridges as are constructed under the authority of an act of Congress which expressly reserved to Congress the right to require changes or modifications in the structure. 22 Op. 343.

**82. Same—New bridge.**—If the company itself voluntarily prostrates its bridge with the intention of constructing another in its place, the Secretary of War has the right to prescribe conditions as to height, length of span, etc. *Ib.*

**83. Alterations.**—The authority conferred upon the Secretary of War by section 18 of the act of March 3, 1899 (30 Stat. 1153), to require any bridge constructed over any navigable water of the United States which is an unreasonable obstruction to navigation to be so altered as to render navigation under it reasonably free, easy, and unobstructed, applies to bridges constructed under the authority of acts of Congress, provision having been made in the previous sections of that act for the case of structures of that nature unauthorized by Congress. 25 Op. 195.

**84. Same.**—The power conferred upon the Secretary of War by section 18 of the act of March 3, 1899, is administrative in character and is a lawful delegation of power. *Ib.*

**85. Same.**—The obstructions to navigation which the Secretary of War by section 18 of the act of March 3, 1899, is authorized to prevent or to remove at the expense of the owner, without compensation, are "material" obstructions. *Ib.*

**86. The Secretary of War is authorized** under the act of July 13, 1892 (27 Stat. 110), to permit the construction of a canal connecting **Port Arthur, Tex., with Sabine Pass**, a navigable water improved at the expense of the Government, provided such canal is one of the works provided for in section 3 [7] of said act. 21 Op. 531.

#### 8. River and Harbor Improvement.

**87. Contracts for completion.**—The Secretary of War is not required by the river and harbor act of June 3, 1896, providing that contracts *may* be entered into by him for the completion of improvements named, to make such contracts, but he has a discretion to decline to make them in all cases where he is convinced that the public interest would not be subserved by making them. 21 Op. 420.

**88. Discretion as to making improvements.**—The river and harbor act of June 3, 1893, making an appropriation for the protection of the east bank of the **Mississippi River** opposite the mouth of the **Missouri River**, leaves it to the discretion of the Secretary of War whether he shall make such expenditure or not. 21 Op. 391.

**89. Payment.**—The Secretary of War is authorized under the river and harbor act of September 19, 1890 (26 Stat. 426, 448), to draw his warrant in favor of the city of **Galena, Ill.**, in payment for the improvement of the **Galena River** contemplated by that act, notwithstanding the fact that the certificate of such work is signed by the surveyor of customs for that port, instead of the collector of the port, as directed by that act, it appearing that there is no collector of the port at **Galena**, and that all the duties of that office are imposed upon the surveyor of customs. 20 Op. 700.

**90. Power to suspend.**—The Secretary of War has discretionary authority, under the act of June 3, 1896 (29 Stat. 213), and subsequent acts, making appropriations for the construction of a tidal canal in **Oakland Harbor, California**, to suspend the work on such improvement when the suspension will best inure to its ultimate completion, but he would not be justified in suspending the work if the only purpose was to delay its completion with the intention of abandoning it. 23 Op. 504.

**91. Same—Suspension because of doubtful expediency.**—A mere doubt as to the wisdom of carrying out a public work authorized by Congress does not justify its suspension and a refusal to complete it. Until such act is repealed it must be assumed to be the deliberate and continuing expression of the will of Congress, and respected as such. *Ib.*

**92. Work in excess of appropriation.**—Under section 5 of the river and harbor act of June 3, 1896 (29 Stat. 235), which limits the amount that the Secretary of War can obligate the Government for in any fiscal year to \$400,000, the contractor may perform in one year the work for which the contract allows him three years to perform, and although he may thus earn a larger sum than the amount stated he may not receive full payment therefor under three years. 21 Op. 379.

**93. Same.**—Where the total amount authorized to be expended is less than \$400,000, contractors may be allowed to earn the amounts authorized to be expended in advance of the appropriation by Congress for such work. *Ib.*

**94. Use of appropriation for improvement elsewhere than directed by statute.**—The Secretary of War has no authority to use any portion of the \$170,000 appropriated by the river and harbor act of March 3, 1899 (30 Stat. 1147), for the improvement of the Missouri River above Sioux City, for improvements at or in front of that city. 22 Op. 519.

**95. Eads' contract.**—If in the judgment of the Secretary of War justice either to the Government or to the contractors on the works at the South Pass channel of the Mississippi River requires him to determine the actual height of average flood tide as a datum of measurement, he has the right to determine such height, and to require the expenses incurred to be provided for by the representatives of James B. Eads, the contractor. 21 Op. 308.

**96.** The words "is authorized" contained in that provision of the river and harbor act of June 13, 1902 (32 Stat. 342), which confers upon the Secretary of War the power to purchase or build a dredge for use in harbor improvement and maintenance in Lake Erie, where equivalent to the word "may," are used in a mandatory sense and are binding upon the executive, whose duty it is to carry them into effect. 24 Op. 594.

**97.** The authority conferred upon the Secretary of War by the river and harbor act of June 13, 1902 (32 Stat. 371), to prosecute or complete, "by contract or otherwise," all river and harbor improvements which theretofore or therein were authorized to be constructed or completed under contract, vested in that officer the power to construct the dredge now nearing completion, for use on Lake Michigan, and to pay the cost of the same by allotment from the sums appropriated for the improvement of the various harbors of that lake. 25 Op. 145.

**98.** The fact that Congress has in other instances made specific appropriations for dredging plants, can not be held to limit the meaning of the words "by contract or otherwise," as used in the act of 1902, by restricting the Secretary to the hiring of a dredge as the only alternative of a contract, nor to forbid that officer from using such dredge upon improvements other than those authorized by appropriations from which the moneys for its construction have been taken. *Ib.*

b. *Chief Clerk.*

**99. Authority to sign requisitions.**—The act of March 4, 1874 (18 Stat. 19), authorizing the Secretary of War, when temporarily absent from the Department because of illness or from other cause, to direct his chief clerk to sign requisitions on the Treasury Department, is not superseded by the act of March 5, 1890 (26 Stat. 17), which provides for an Assistant Secretary of War. 24 Op. 646.

**100. Same.**—During the temporary absence from the Department of both the Secretary of War and his assistant, the Secretary is empowered, under the act of 1874, to authorize the chief clerk of the Department to sign requisitions, etc., that act being still in force, at least within the limited scope here stated. *Ib.*

CHIEF OF THE RECORD AND PENSION OFFICE.

See WAR DEPARTMENT, III.

c. *Generally.*

**101.** A prisoner sentenced by a court-martial to confinement in a penitentiary of the United States should be conducted to the prison by the proper officer of the War Department. 21 Op. 204.

## III. Bureaus or Divisions.

102. **Record and Pension Office, Chief of.**—The acceptance of an appointment as Chief of the Record and Pension Office of the War Department, with the rank, pay, and allowances of a colonel by a surgeon of the United States Army creates a vacancy in the former office. 20 Op. 427.

103. **Same—Effect of the act.**—Section 8 of the act of March 2, 1899 (30 Stat. 979), did not create a new office, but had the effect to change the rank, pay, and allowances of the Chief of the Record and Pension Division of the War Department to that of a brigadier-general. 22 Op. 480.

104. **Same.**—The acceptance or nonacceptance by the chief of the new commission, with the added rank, under the above-named act, will not change his official status or in any manner affect him. *Ib.*

105. **Same.**—Upon the approval of the act the chief of such division became entitled to the increased rank and pay without the necessity of a nomination by the President and confirmation by the Senate. *Ib.*

106. **Same.**—This act did not affect the office as a separate and distinct official position, but it remained the same as when established, to be filled in the same manner and with the same duties and obligations. *Ib.*

107. **Same.**—When a vacancy occurs in this office, then the increase of rank, pay, and allowances provided by the act of 1899 will cease, and the person succeeding to said office will be entitled only to the rank, pay, and allowances of a colonel, unless there should be further legislation upon the subject. *Ib.*

108. **The volunteer pension branch of the War Department** was not within the classified service, and positions therein can not now be classified, as that branch no longer exists, having been merged into the Record and Pension Division of that Department. 22 Op. 6.

109. **Inspector-General's Department—Promotion.**—Where a right to an appointment or promotion in the Inspector-General's Department existed on a certain date but the appointment was not actually made until later, the office can not be held to have vested until the appointment was actually made. 25 Op. 591.

110. **Same.**—The fact that such officer is allowed to pay for the higher grade from the date of the vacancy to the date of commission does not alter the situation. *Ib.*

111. **Same—Rank and office are not identical.**—The former is an incident of office and is used as a designation or distinction conferred upon an officer in order to fix his relative position with reference to other officers, or to determine his pay and emoluments. *Ib.*

112. **Same.**—Such practice in the War Department rests upon the immemorial custom of that Department and not upon statutory authority. *Ib.*

113. **Same.**—A complicated chain of events considered and held that under the act of February 2, 1901 (31 Stat. 748), the office of lieutenant-colonel in the Inspector-General's department vested in Major Chamberlain on March 11, 1901, and that he was not entitled to be appointed to the office left vacant by the retirement of Colonel Knox on April 13, 1903. *Ib.*

## IV. Clerical Force.

114. **An army officer detailed for duty in a clerical position** can not be considered as a member of the "classified service," and after separation therefrom can not be reinstated under Rule IX. 22 Op. 6.

115. **Reinstatement of former clerk.**—A soldiers' widow, formerly employed in the War Department under an appropriation for emergency clerical work made necessary by the war with Spain, who resigned from her position on December 31, 1900, which position was covered into the classified service by section 3 of the act of April 28, 1902 (32 Stat. 171), is eligible, under rule 9 of the Civil Service Regulations, to reinstatement in that Department. 25 Op. 618.

116. **State.**—Rule 9, as amended, which provides for the reinstatement of a person separated, without delinquency or misconduct, from a "competitive position," means the separation from a position "competitive" at the time of the request for reinstatement, and not that the position must have been competitive at the time of such separation. *Ib.*

Opinions of June 23 and August 27, 1902 (24 Op. 81, 103), approved. *Ib.*

**WAR EMERGENCY EMPLOYEES.**

*See* CIVIL SERVICE, 114, 116.

**WAR-REVENUE ACT.**

(Act of June 13, 1898, 30 Stat. 448.)

*See* INTERNAL REVENUE.

**WAREHOUSE.**

*See* CUSTOMS LAW, III, e; INTERNAL REVENUE, 59-64, 115.

**WARRANT.**

RECALL OF. *See* TREASURY DEPARTMENT, 13, 14.

**WARRANT MACHINISTS.**

*See* NAVY, 89, 92.

**WASHINGTON AQUEDUCT TUNNEL.**

*See* DISTRICT OF COLUMBIA, VI.

**WASHINGTON, D. C.**

MATTERS PERTAINING TO. *See* DISTRICT OF COLUMBIA.

**WASHINGTON, GEORGE.**

BIRTHPLACE OF. *See* WAKEFIELD, VA.

**WASHINGTON AND ARLINGTON RAILROAD COMPANY.**

BRIDGE. *See* NAVIGABLE WATERS, 115-117.

**WASHINGTON AND GLEN ECHO RAILWAY.**

*See* LICENSES, 18.

**WASHINGTON AND IDAHO RAILROAD COMPANY.**

*See* INDIANS, 47, 48.

**WASHINGTON HOSPITAL FOR FOUNDLINGS.**

*See* DISTRICT OF COLUMBIA, 32.

**WASHINGTON LIGHT INFANTRY OF CHARLESTON, S. C.**

*See* SOUTH CAROLINA, 1.

**WASHINGTON MONUMENT.**

Congress has made provision for the protection of the Washington Monument from chipping vandals by section 1 of the act of July 20, 1892 (27 Stat. 322), which provides "a penalty of not more than \$50 for each and every such offense," and in the act of October 2, 1888 (25 Stat. 505, 533), whereby the Secretary of War is "charged with the custody, care, and protection of the Monument," and an appropriation is made for a custodian and other employees necessary for its care. 21 Op. 215.

**WASHINGTON NAVY-YARD.**

*See* NAVY-YARD.

**WASHINGTON STATE.**

*See* PENITENTIARIES, 2.

**WASHINGTON TERRITORY.**

INDIAN WAR CLAIMS. *See* CLAIMS, 34-35.

**WATCHMEN.**

IN PUBLIC SQUARES AND PARKS, DISTRICT OF COLUMBIA. *See* DISTRICT OF COLUMBIA, 26.

**WATERS.**

*See* NAVIGABLE WATERS.

**WEATHER BUREAU.**

*See* DEPARTMENT OF AGRICULTURE, III, b.

**WEST POINT.**

*See* MILITARY ACADEMY, WEST POINT.

**WEST VIRGINIA.**

Section 3481, Revised Statutes, makes it the duty of the Secretary of the Treasury to insist upon the right of set-off against the demands of the State of West Virginia for refund of the direct tax to the extent of the equitable proportion of the debt of Virginia to the United States for which West Virginia is liable. 20 Op. 240.

**WESTERN UNION TELEGRAPH COMPANY.**

CLAIM OF. *See* RAILROADS, 35.

**WHARFAGE CHARGES.**

*See* STATE TAX, 4-6.

**WHARVES.**

*See* ARMY, 37; WAKEFIELD, VA.

**WHEAT.**

IMPORTED, DRAWBACK ON. *See* CUSTOMS LAW, 374, 377, 378.

**WHITE HOUSE.**

DETAIL OF REGISTRY CLERK TO. *See* POST-OFFICE DEPARTMENT, 13.

**WILSON ACT.**

(Act of August 27, 1894, 28 Stat. 509.)

**WINDMILL.**

*See* DEPARTMENT OF COMMERCE AND LABOR, 23.

**WINNEBAGO AND CROW CREEK RESERVATION.**

*See* INDIANS, 31.

**WIRELESS TELEGRAPHY.**

*See* TELEGRAPHS, 5.

**WISCONSIN.**

**Purchase of land by the United States—Jurisdiction.**—The certificate of the governor of Wisconsin, in conformity to section 2, chapter 1, of the Revised Statutes of 1878 of the State, consenting to the purchase of certain land by the United States provided the State shall forever retain concurrent jurisdiction over any such place to the extent that all legal and military process issued under the authority of the State may be executed anywhere on such place or in any building thereon or any part thereof, and that any offense against the laws of the State committed on such place may be tried and punished by any competent court or magistrate of the State, to the same extent as if such place had not been purchased by the United States, does not satisfy the provisions of section 355, Revised Statutes of the United States. 20 Op. 611.

RAILROAD LAND GRANTS. *See* RAILROADS, 42.

**WITHDRAWAL FROM BOND.**

See CUSTOMS LAW, III, f; INTERNAL REVENUE, V.

**WITHDRAWAL OF BIDS.**

See CONTRACTS, 31.

**WITHDRAWAL OF PUBLIC LANDS.**

See PUBLIC LANDS, 5.

**WITHHOLDING PAY.**

OF MAIL CONTRACTOR. See POSTAL SERVICE, 96, 97.

**WITNESSES.**

1. Government employees are not entitled to witness fees when subpoenaed to testify in behalf of the United States, but are entitled to their expenses. When subpoenaed by a private party, they may demand and accept witness fees. 21 Op. 263.

2. Where a civilian witness is brought before a court-martial but refuses to testify, the court is not invested with any inherent power to punish the witness in such case, either summarily or otherwise, as for a contempt. Such power can only be exercised by it when given by the positive terms of some statute. 18 Op. 278.

3. Same.—Section 1202, Revised Statutes, arms the court with authority to compel the witness to appear and testify, so far as this can be done by process; but in securing his testimony the court is restricted to the means which it is thus authorized to employ. It can not inflict any punishment where the power to impose it is not clearly conferred by Congress. *Ib.*

4. A naval court-martial, or judge-advocate thereof, has no power to compel a civilian who is not subject to the articles for the government of the Navy to appear and testify before such court. 19 Op. 501.

5. Same.—Neither article 42 nor article 57 in section 1624, Revised Statutes, gives the

power to compel the attendance of civilian witnesses. *Ib.*

6. Same.—The provisions of section 1202, Revised Statutes, apply only to military (i. e., Army) courts. *Ib.*

7. Witness fees must be first paid or tendered—Army court-martial.—The act of March 2, 1901 (31 Stat. 950), which provides that a person who, being duly subpoenaed to appear as a witness before a general court-martial of the Army, wilfully neglects or refuses to appear, or refuses to qualify as a witness, or to testify or produce documentary evidence which he may have been legally subpoenaed to produce, shall be deemed guilty of a misdemeanor, requires that the legal fees of such witness shall be first duly paid or tendered in order to lay the foundation for a prosecution under that act. 23 Op. 424.

8. Same.—A mere statement in the subpoena, signed by the judge-advocate of the court-martial to the effect that the United States tenders or guarantees the payment of the authorized fees is not a sufficient compliance with that act to support a prosecution thereunder. *Ib.*

9. Compulsory testimony—Licensed officer of steam vessel.—A licensed officer of a steam vessel, duly summoned to give testimony in a hearing before a board of United States local inspectors of steam vessels, who refuses to answer questions which are, in the opinion of the board, material and proper, may be compelled to answer, under the penalty of suspension or revocation of his license, or otherwise. 24 Op. 136.

10. Same—Contempt.—A refusal on the part of a witness to answer a proper question pertinent to the issue before a court is a contempt, and while this power may not be absolute in this special tribunal, which is not given the right to impose fines or imprisonment for disobedience to its authority, nevertheless the principle may be invoked so far as the special service and special discipline go. *Ib.*

11. Same—May not refuse to answer on the ground that it may subject him to a penalty.—Such licensed officer when charged with a violation of section 4449, Revised Statutes, and on trial before the above-named board on such charge, has no right to refuse to answer a question material to the inquiry upon the ground that his answer may subject

him to the penalty provided in that section. *Ib.*

12. **Same.**—Section 4449, Revised Statutes, is a remedial, not a penal, statute, and the revocation of a license as therein provided may be viewed rather as a remedy to insure better efficiency in the Steamboat-Inspection Service than as a punishment for an offense committed. *Ib.*

13. **Same.**—May not withhold information and remain in the service.—Such licensed officers are engaged in a special service, peculiarly related to the Government; they are endowed with certain privileges and subject to certain burdens, and paramount considerations of the good of the service require that such an officer shall not be permitted to withhold any information material to an inquiry affecting the service and yet remain a member of that service. *Ib.* (p. 137).

#### WORDS AND PHRASES.

1. **"Accepted for transportation."**—The term "accepted for transportation," as used in the paragraph entitled "Express and freight" in the war-revenue act (30 Stat. 459), means goods received from a shipper or consignee other than the carrier itself, and is intended to apply to goods received for transportation in the usual manner by common carriers. 22 Op. 252.

2. **"Accrued pensions."**—The terms "accrued pensions," as used in section 4718, Revised Statutes, mean the amount of money *unpaid* by the Government to which a pensioner, or a person who had a valid claim for pension pending, was entitled at the time of his death. 19 Op. 1.

3. **"Actual, bona fide residence."**—See "Living and residing and having his or her place of abode."

4. **"Actual subscribers thereto."**—By "actual subscribers thereto," in section 11 of the act of March 3, 1879 (20 Stat. 359), is meant those who have in fact subscribed for a paper, and who, in subscribing, have dealt directly with the agency, or whose subscriptions have been obtained for or in behalf of the agency, the subscription list being in all cases owned by the news dealer. 17 Op. 165.

5. **"Actually served."**—The term "actually served," employed in section 1219, Revised

Statutes, is used *ex industria*, and is intended to prevent any service purely constructive in its character from affecting the relation between officers of the same date. 17 Op. 52.

6. **"Adjournment."**—See "Recess of the Senate."

7. **"Advanced."**—The word "advanced" in section 3739, Revised Statutes, which requires the return of money advanced by the United States on any contract wherein a member of Congress is benefited, is used in its ordinary legal meaning, and does not apply to contracts that have been fully executed and payment thereon fully made. 25 Op. 71.

8. **"Agent."**—The "agent" referred to in section 3469, Revised Statutes, is one who has special charge of a claim for purposes of collection or enforcement in the same way that a district or special attorney has, though he need not possess their professional character. 21 Op. 361.

9. **"Agent."**—The Comptroller of the Treasury is not an "agent" within the meaning of section 3469, Revised Statutes. *Ib.*

10. **"All employees of the Census Office."**—The words "all employees of the Census Office" in section 5 of the above-named act can not be held to apply to special agents or other field employees who may be temporarily assigned to service in the Census Office. 24 Op. 78.

11. **"All other ores."**—The words "all other ores," as used in the proviso of paragraph 199 of the act of October 1, 1890 (26 Stat. 581), mean all ores other than those known commercially as lead ores. 19 Op. 690.

12. **"American vessels."**—The expression "American vessels," in section 12 of the act of June 26, 1884 (23 Stat. 56), includes not only "vessels of the United States" as defined by section 4131, Revised Statutes, but "foreign-built registered American vessels" as well. 18 Op. 99.

13. **An "alien seaman"** is one who, in pursuit of and as a necessary incident to his calling, temporarily enters this country and is awaiting his departure; while an "alien immigrant" is one who enters this country with the intention of remaining in it. 23 Op. 521.

14. **"Amnesty."**—The word "amnesty" in the Edmunds Act of March 22, 1882 (22 Stat. 30), was used advisedly with intent to indi-



cate that the President might, by act of Executive clemency, embrace a whole class of offenders, instead of dealing with each case separately. 20 Op. 668.

15. "**Any revenue laws.**"—The words "any revenue laws," found in section 5293, Revised Statutes, authorize the remission of a penalty under the internal-revenue laws as well as under the customs-revenue laws. 23 Op. 398.

16. "**Any right accruing.**"—The words "any right accruing," etc., used in section 13 of the act of March 3, 1887 (22 Stat. 488), do not include such taxes accruing at the date of the repeal, there being, as to them, no right *in esse*. It is the accruing right, not the accruing tax, that is saved. 17 Op. 539.

17. "**Any telegraph company organized under the laws of any State.**"—The words "any telegraph company organized under the laws of any State," used in the act of July 24, 1866 (14 Stat. 221), entitled "An act to aid in the construction of telegraph lines," etc., were used advisedly, and with a recognition that they did not include a "person" or an individual. 24 Op. 603.

18. "**Appear.**"—The word "appear," as used in section 30 of the tariff act of July 24, 1897 (30 Stat. 211), does not require that the imported materials should appear in the sense of being seen in the completed articles, but only in the sense of being proven to be present in the completed articles. 25 Op. 344.

19. "**Appoint.**"—See "Employ."

20. "**Appointment**"—"Nomination."—There is no distinction between an appointment and a nomination other than the fact that the President nominates for appointment when the Senate is in session, and appoints when he fills a vacancy temporarily during the recess of the Senate. 23 Op. 599.

21. "**Appointment.**"—The word "appointment," as used in section 1219, Revised Statutes, applies only to the original entry of an officer of the Army into the regular service or his subsequent appointment by selection, and does not include his appointment on promotion thereafter made. Opinion of Attorney-General Devens, of February 21, 1881 (17 Op. 34), dissented from. 17 Op. 196.

22. "**Appointment.**"—Appointment is the selection of persons, not now in the Army, as officers of it, or the designation by *selection* of an officer already in the Army to a vacancy which is not required by the law or the regu-

lations to be filled by promotion according to seniority. 17 Op. 197.

23. "**Apollinaris water.**"—In the light of the information presented, apollinaris mineral water is regarded as an artificial mineral water, and dutiable as such. 17 Op. 176.

24. "**Appraisers.**"—The term "appraisers" in the act of March 2, 1883 (22 Stat. 452), does not embrace "assistant appraisers." 17 Op. 585.

25. "**Are hereby authorized.**"—The words "are hereby authorized," in the act of May 26, 1882 (22 Stat. 97), providing for the exchange of gold bars for gold coin by the superintendents of the coinage mints and of the assay office at New York, are to be construed as mandatory upon those officers. 19 Op. 575.

26. "**Armament.**"—See "Exclusive of armament."

27. "**Armory**" comes literally within the definition of an arsenal, it being "a place where arms and instruments of war are deposited for safe-keeping." 23 Op. 443.

28. "**Arsenal**" in its generic meaning is "a place for the storage, or for the manufacture and storage, of arms and all military equipment, whether for land or naval service." 23 Op. 443.

29. "**Arsenals of the United States Government**" include powder and ordnance depots, the Gun Factory, and the National Armory. 23 Op. 443.

30. "**Ascertained.**"—The word "ascertained," as used in the proviso to section 30 of the tariff act of July 24, 1897 (30 Stat. 211), is obviously used to describe knowledge which is obtained from evidence, and not merely that which is obtained from the exercise of the senses. 25 Op. 344.

31. "**Assigns.**"—The word "assigns" in the said acts of 1894 (28 Stat. 342) and 1896 (29 Stat. 208) is intended to point out the party or parties who took over by formal assignment all rights to or interest in a contract, or such measure of rights and interest as carve out a complete share in the undertaking itself, with all its risks and incidents. The assignee recognized must take in accordance with the method and formalities provided by section 3477, Revised Statutes. 22 Op. 156.

32. "**Assistant appraisers.**"—See "Appraisers."

33. "**Assistant or deputy of such chief.**"—The phrase "assistant or deputy of such chief," etc., in section 178, Revised Statutes, is to be construed as including an assistant or deputy only whose appointment is specifically provided for by statute. 19 Op. 503.

34. "**Because of.**"—See "**By reason of.**"

35. "**Bicycles.**"—Bicycles are "personal effects" within the meaning of our tariff acts, and therefore exempt from duty under the act of 1890 (26 Stat. 611). 17 Op. 679, adhered to. 20 Op. 648, 719.

36. "**Bill of lading.**"—In maritime jurisprudence a "bill of lading" signifies a memorandum or acknowledgment in writing, signed by the captain or master of a ship or other vessel, that he has received in good order on board of his ship or vessel, therein named, at the place therein mentioned, certain goods therein specified, which he promises to deliver in good order, the dangers of the sea excepted, at the place therein appointed, for the delivery of the same to the consignee therein named, or to his assigns, he or they paying freight for the same. 23 Op. 3.

37. "**Bond.**"—A bond is an obligation in writing and under seal, binding the obligor to pay a sum of money to the obligee. It is sometimes denominated a specialty, being under seal, as distinguished from a simple promise to pay not sealed. 22 Op. 369.

38. "**Book.**"—The term, "book" as construed by the courts under the copyright laws, includes a musical or other composition, though printed on but one sheet. 22 Op. 29.

39. "**Broker.**"—The word "broker" has now no definite legal signification. 21 Op. 255.

40. "**Broker.**"—A broker is one who negotiates purchases or sales, or both purchases and sales, of one or all of the following-named classes of property: Bonds, exchange, bullion, coined money, bank notes, promissory notes, and other securities. 23 Op. 139.

41. "**By reason of absence from his command.**"—The phrase "by reason of absence from his command at the time he became entitled to his discharge," as used in the first section of the act of August 14, 1888 (25 Stat. 442), is to be regarded as equally applicable to the date when the term of enlistment of the applicant expired and to the date when he would have received his discharge along

with other enlisted men with whom he served had he been present. 19 Op. 221.

42. "**By reason of.**"—The words "by reason of," found in section 2, Rule IX, of the Civil-Service Rules, has the force and meaning of the phrase "because of." 23 Op. 91.

43. "**By the shore.**"—The expression "by the shore" in the grant to the Government of the site of the Hospital Point Light Station in Massachusetts, which is bounded by a line running to the shore and thence *by the shore*, etc., does not include the shore. 19 Op. 20.

44. "**By the shore.**"—Had the site been bounded in the deed *on or by the sea* instead of *by the shore*, the result would have been different. *Ib.*

45. "**Casualties.**"—The word "casualties" in section 9 of the navy-personnel act of March 3, 1899 (30 Stat. 1006,) refers, as ordinarily understood, to death, resignation or dismissal, and does not include promotion. 25 Op. 452.

46. "**Cattle.**"—Sheep are "cattle" within the meaning of section 2117, Revised Statutes, which imposes a penalty for driving any stock, etc., to range and feed on Indian lands without the consent of the tribe. 18-91.

47. A **charitable or eleemosynary institution** is one created or existing for the relief of the poor, or for the purpose of conferring any gratuitous benefit. 23 Op. 287.

48. "**Charter**" seems to be a proper word to express a power of granting to individuals rights which otherwise belong to the public, whether such grant by the State is made directly or indirectly. This word, as used in Rule VII, paragraph 2, of the General Rules, etc., of the Board of Supervising Inspectors of Steam Vessels, covers the case of boats licensed, under a general law, by a county court to traverse ferry routes established by such courts. 18 Op. 16.

49. "**Charter party.**"—A "charter party," in its primary meaning, was a contract for the letting of the whole or part of a ship for the conveyance of goods in consideration of the payment of freight. 23 Op. 4.

50. "**Chartered ferry.**"—By "chartered ferry" is intended any ferry established in accordance with law. 18 Op. 16.

51. "**Chief.**"—The word "chief," as used in the provision of section 1 of the act of February 8, 1875 (18 Stat. 307), imposing a duty of 60 per cent ad valorem on all goods,

wares, and merchandise made of silk or of which silk is a component material, of **chief value**, etc., means greater than either of the other materials; not greater than their aggregate. 17 Op. 337.

52. "**Chief officer of customs.**"—A deputy collector of customs, with headquarters in the customs district of Vermont, but stationed for service at Montreal, Canada, is a "chief officer of customs" within the meaning of section 4 of the above-named act, which authorizes the payment of a reward for original information leading to the discovery of any fraud upon the customs revenue. 24 Op. 61.

53. "**Chinese consul at the port of departure.**"—The phrase "Chinese consul at the port of departure" used in Article II of the convention between the United States and China, proclaimed March 17, 1894, means the consul who represents the Chinese Government at the place where the laborer leaves the United States. 21 Op. 357.

54. "**Cost.**"—The word "cost" in section 4136, Revised Statutes, is to be construed literally, and if the actual cost of the repairs on a wrecked vessel is three times the actual purchase price of the wreck then she is entitled to registry. 21 Op. 143.

55. "**Costs, charges, and expenses.**"—An export tax levied by a foreign government is not one of the "costs, charges, and expenses" referred to in section 19 of the customs administrative act of June 10, 1890 (26 Stat. 139). 21 Op. 108.

56. "**Costs of suits.**"—The words "costs of suits" in the appropriation act for the Navy Department of June 30, 1890 (26 Stat. 189), relate to the ordinary taxed costs of suits and not to fees of counsel. 20 Op. 49.

57. "**Cows,**" when kept for household use, are to be considered "household effects" as that term is used in paragraph 504 of the act of July 24, 1897 (30 Stat. 196). 23 Op. 310.

58. "**Country of production.**"—The words "place of manufacture," as used in the act of March 3, 1903 (32 Stat. 1158), do not mean merely the "country of production," but refer to the particular locality or district in which the goods are produced or manufactured. 25 Op. 142.

59. "**Custom-house broker.**"—The term "custom-house broker" in section 23 of the tariff act of 1894 (28 Stat. 552) includes persons dealing in drawback matters exclusively

as well as those who combine all branches of custom-house work. Such a broker, when his license has been revoked, can not thereafter deal directly with the customs officials, except when acting for themselves as principals. 21 Op. 255.

60. "**Departmental service.**"—The words "departmental service" and "the service," as used in the *proviso* in the appropriation act of July 11, 1890 (26 Stat. 235), requiring certificates of residence of applicants for examination before the Civil Service Commission, mean the classified civil service as established by section 163, Revised Statutes, and section 6 of the act of January 16, 1883 (22 Stat. 405). 19 Op. 624.

61. "**Dependent upon lot or chance.**"—These words, as used in section 3894, Revised Statutes, as amended by the act of September 19, 1890 (26 Stat. 465), exclude estimates which are based upon mental calculation, even though the factors which enter into such calculation may be uncertain and matter of conjecture. 23 Op. 492.

62. "**Design**" refers to manufactures as well as to the fine arts, and the test of a designer's industrial character may depend upon the nature of his designs or the conditions and methods of its application to manufacture. 23 Op. 381.

63. "**Document.**"—The word "document" in the joint resolution of July 7, 1882, "to provide for the printing of public documents," etc., applies to everything that is a document, no matter by what kind of legislation ordered, whether by special act or otherwise, so that such legislation does not actually forbid the printing of the "usual number" of the document. 18 Op. 51.

64. A "**Draftsman**" who is described as a "lace maker," seems to be one who is so closely connected with that particular trade as to be a member of it, just as a molder or designer of molds appears to belong to the metal-casting trade. 23 Op. 382.

65. "**Dramatic composition.**"—May be a book. 23 Op. 353.

66. **Drawback moneys** are duties repaid to the importer or the person to whom he has transferred his rights. 21 Op. 255.

67. "**Due process of law**" does not necessarily mean a judicial proceeding. When property is of trifling value, and its destruction is necessary to effect the object of a valid law,

it is within the power of the legislature to order its summary destruction without obtaining a forfeiture by judicial proceedings. 22 Op. 70.

*See also* CONSTITUTIONAL LAW, 5.

68. "**Duty**" referred to in section 2932, Revised Statutes, means import duty. 23 Op. 419.

69. "**Employ.**"—The word "employ" is sometimes used in our legislation in a sense equivalent to "appoint." 17 Op. 504.

70. "**Employ.**"—In section 169, Revised Statutes, this word is regarded as the equivalent of "appoint." 21 Op. 355.

71. "**Employ.**"—The word "employ" in section 169, Revised Statutes, has always been regarded as the equivalent of "appoint." 21 Op. 363.

72. "**Errors of fact.**"—The "errors of fact" referred to in section 1 of the act of March 3, 1875 (18 Stat. 469), are mistakes of fact within the meaning of the common law—that is, mutual mistakes of facts. 21 Op. 226.

73. "**Event of a lottery.**"—The phrase "event of a lottery," in section 2 of the act of July 1, 1902 (32 Stat. 714), was not intended by Congress to refer to a drawing *à l'ouïe*, but to any scheme or plan whereby the value of the certificate is made to depend upon lot or chance. 25 Op. 266.

74. "**Examiner.**"—The term "examiner," as used in sections 2, 3, and 4 of the act of March 2, 1883 (22 Stat. 452), signifies any officer authorized by the fifth section to act in that capacity, and nothing more. 17 Op. 585.

75. "**Exceptional.**"—The word "exceptional" in section 5 of the act of March 3, 1893 (27 Stat. 715), relating to sick leave of departmental clerks, raises a question of fact upon which the Attorney-General can not advise. 20 Op. 716.

76. "**Exclusive of armament.**"—The words "exclusive of armament," as used in the first section of the act of August 3, 1886 (24 Stat. 215), with reference to armored vessels, are not to be understood as excluding the offensive armament, such as guns, torpedoes, etc., *only*; the term "armament" comprehending besides those articles, such shields and protections as are directly and necessarily connected with the efficient and safe working thereof. 19 Op. 235.

77. "**Execution.**"—The word "execution" in article 8 of the convention with France of February 23, 1853 (10 Stat. 996), is obviously used in the sense of performance. 18 Op. 257.

78. "**Expedited service.**"—"Expedited service," referred to in section 3961, Revised Statutes, relative to the carriage of mails, means a speedier performance of each trip than was originally stipulated for. 17 Op. 166.

79. "**Export.**"—The word "export," in its earliest sense, meant the carrying out of goods from one country into a foreign country by means of a ship. 23 Op. 4.

80. "**Foreigner.**"—The word "foreigner," in section 2134, Revised Statutes, is used in its ordinary signification—meaning one who is born out of the United States and is not naturalized, or who owes allegiance to any other government than that of the United States. 18 Op. 555.

81. "**Foreign built registered American vessels.**"—*See* "American vessels."

82. "**Forgings of iron and steel.**"—The phrase "forgings of iron and steel," as used in clauses Nos. 163 and 167 (T. I., new), of the act of March 3, 1883 (22 Stat. 498), includes forgings made of iron and forgings made of steel, and is not limited to articles composed of both iron and steel combined in the same forging. 19 Op. 157.

83. "**Goods.**"—The term "goods," as used in the paragraph entitled "Express and freight," Schedule A of the war-revenue act of June 13, 1898 (30 Stat. 459), includes money. 22 Op. 178.

84. "**Goods.**"—The terms "goods," "goods and chattels," and "goods, wares, and merchandise" have no invariable fixed meaning in legal construction. 22 Op. 178.

85. "**Government.**"—The phrase "government of the foreign country," in section 14 of the act of June 26, 1884 (23 Stat. 57), refers to the special government of such "country," as distinguished from that of the empire or other ultimate sovereignty of which it may be a member. 18 Op. 53.

86. "**He shall be retired with the rank to which his seniority entitled him to be promoted.**"—The phrase "he shall be retired with the rank to which his seniority entitled him to be promoted," in the proviso to section 6 of the act of October 1, 1890 (26 Stat.

562), is not a mandatory provision for the retirement of the disabled officer, but is for the purpose of fixing the rank with which he should be retired. 21 Op. 385.

87. "Household effects."—This term, as used in paragraph 504 of the act of July 24, 1897 (30 Stat. 196), properly includes cows when kept for household use. 23 Op. 310.

88. "Immigrant."—It will be safer and better practice not to attempt a definition of the word "immigrant," but to decide each case with reference to its particular circumstances. 20 Op. 371.

89. "Immigration" means the act of immigrating, and to immigrate is to come into a country of which one is not a native, and in which one has not acquired a residence or domicile. 22 Op. 353.

90. "Impressment."—A threat to seize a vessel unless certain troops and ammunition are received and transported, resulting in the compulsory submission of the master of the vessel, does not constitute an impressment within the meaning of section 3483, Revised Statutes. 17 Op. 90.

91. "Imported."—The word "imported" in section 3433, Revised Statutes, is used generally, and includes "reimported." 18 Op. 82.

92. "Increase of service."—"Increase of service," mentioned in section 3960, Revised Statutes, relative to the carriage of mails, means an additional number of trips above that originally contracted for. 17 Op. 166.

93. "Incurred."—The word "incurred" as employed in section 4751, Revised Statutes, denotes a condition of liability to the penalty and forfeiture; the meaning of the clause "all penalties and forfeitures incurred" being the same as if it read "all penalties and forfeitures to which any person has become liable under the provisions," etc. The penalty or forfeiture is "incurred" in the sense in which that word is used in the first clause of that section before any proceedings for the recovery thereof have been commenced. 17 Op. 283, 284.

94. "Iron ore."—In determining the meaning of "iron ore," as used in the provision of the act of March 3, 1883 (22 Stat. 497), which imposes a duty thereon, regard should be had to the commercial signification of the term, as Congress must be understood to have

used the same in its commercial sense. 18 Op. 466.

95. "Iron ore."—The term "iron ore," as used in the act of March 3, 1883 (22 Stat. 497), is generic, embracing all the different species of iron ore, regardless of their price, value, or accidental component chemical ingredients. It is the iron ore of commerce. 18 Op. 530.

96. "Is authorized."—The words "is authorized" contained in that provision of the river and harbor act of June 13, 1902 (32 Stat. 342), which confers upon the Secretary of War the power to purchase or build a dredge for use in harbor improvement and maintenance in Lake Erie, while equivalent to the word "may" are used in a mandatory sense and are binding upon the executive whose duty it is to carry them into effect. 24 Op. 594.

97. "Jeopardy."—The jeopardy of the law means real peril, originally of life or limb, and always of substantial punishment or penalty. There must be a trial upon an indictment for an offense, or upon some equivalent charge and presentment, as by court-martial, submitting a definite issue and involving conviction or acquittal. 25 Op. 623.

98. "Laborers and mechanics."—The words "laborers and mechanics" as used in the eight-hour law of August 1, 1892 (27 Stat. 340), apply to all persons who may fairly come within the description of laborers and mechanics, whether they are paid by the year, by the month, or by the day. 25 Op. 465.

99. "Land."—The words "land" and "port," used in Article II of the treaty of 1894 with China, do not limit the right to return to such Chinese as travel by sea. 21 Op. 357.

100. "Laws of the Land."—A "city ordinance" is within the expression "laws of the land" as used in the fifty-ninth article of war, and a soldier violating such an ordinance and escaping to a military reservation should be surrendered upon demand to the civil authorities for trial. 21 Op. 88.

101. "Legal representatives."—The phrase "legal representatives" in the act of 1896 (27 Stat. 208), refers to those who may be charged with the administration of the contractor's estate, or as equivalent to the "assigns" of the contract as an integral thing. 22 Op. 156.

102. "Liquors."—The word "liquors" in paragraph 10 of the tariff act of October 1, 1890 (26 Stat. 614), does not include whisky. 20 Op. 699.

103. "Living and residing and having his or her place of abode."—If the words "living and residing and having his or her place of abode" used in the order of the Civil Service Commission of March 7, 1893, are construed by the Commission as equivalent to the words "actual, bona fide residence," found in the act of July 11, 1890 (26 Stat. 235), then the order is a lawful regulation; but if they are given a more restrictive construction, the order is to that extent unauthorized. 20 Op. 649.

104. "Lottery."—The name "lottery" covers any determination of gain or loss by the issue of an event which is merely contrived for the occasion. 21 Op. 313.

105. "Magnums" are only bottles of an especially large size and are as clearly embraced in the expression "bottles or jugs," in the second proviso of paragraph 296, as in the expression "other vessels," in paragraph 295 of the tariff act of July 24, 1897 (30 Stat. 174). 23 Op. 48.

106. "Manufactures of wool."—The phrase "manufactures of wool" in paragraph 297 of the tariff act of 1894 (28 Stat. 531) does not include articles of which wool is a component material, but of which it is not the material of chief value. 21 Op. 66.

107. "May."—While the word "may" in a statute is sometimes construed as imposing a duty rather than conferring a discretion, yet this rule of construction is by no means invariable, and its application depends on the context of the statute, and whether it is fairly to be presumed that it was the intention of the legislature to confer a discretionary power or to impose an imperative duty. 21 Op. 420.

108. "May."—The word "may" in rule 9 of the Civil Service Regulations vests a discretion in that Commission. The question of reinstatement is one of administrative discretion, and is not to be granted except when consistent with the interests of the public service. 24 Op. 103.

109. "May."—While "may" in any statute is ordinarily to be construed as "shall" or "must" when public rights or interests are concerned, yet the construction depends

upon the context of the statute, the test being the intent of the legislature. 24 Op. 594.

110. "May be."—The various provisions in the river and harbor act of June 3, 1896, that contracts "may be" entered into by the Secretary of War for the completion of certain improvements, to be paid for out of future appropriations, are not mandatory but discretionary, and he may decline to make contracts in all cases where he is convinced that the public interests will not be subserved by making them. 21 Op. 420.

111. "Members of said organizations in their own right."—These words, as used in the joint resolution of September 25, 1890 (26 Stat. 681), which provides that the distinctive badges adopted by the military associations of men who served in the armies and navies of the United States during the various wars waged by the United States may be worn upon all occasions of ceremony by officers and enlisted men of the Army and Navy of the United States, include all those who, under the rules of these orders, were eligible for membership, either because of their own service or because of their kinship to one who had been in the service. 23 Op. 454.

112. "Merchandise."—The word "merchandise" is a word used in different senses in different parts of said legislation. In Revised Statutes, sections 2766, 3111, it covers any tangible personal property; in sections 2795, 3113, it means property imported into the country, whether for sale or not. In section 1 of the act of March 3, 1875 (18 Stat. 469), it has a narrower meaning, but still includes all personal property not imported for the use or enjoyment of the importer himself. 21 Op. 92.

113. "Merchant."—A Chinese person is not a "merchant" within the meaning of section 2 of the act of March 3, 1893 (28 Stat. 8), unless he conducts his business either in his own name or in a firm name of which his own is a part. 21 Op. 5.

114. "Meritorious."—The word "meritorious" in section 5 of the act of March 3, 1893 (27 Stat. 715), relating to sick leave of Department clerks, is surplusage. 20 Op. 716.

115. "Mile."—The word "mile," as used in section 5 of the act of March 3, 1891 (26 Stat. 832), to provide for ocean mail service between the United States and foreign ports,

etc., means a mile of 5,280 feet, and not a geographical mile. 20 Op. 98.

116. "**Miscellaneous.**"—The word "miscellaneous" in section 2 of the act of April 21, 1894 (28 Stat. 62), refers to that class of commodities which must be purchased on a considerable scale and used alike by many or all of the various departments and Government establishments in the city of Washington. 21 Op. 59.

117. "**Mistakes of fact.**"—See *Errors of fact.*

118. "**Modification.**"—To change slightly, as in the form or in the external qualities of a thing, or to change somewhat the form or qualities of. 21 Op. 207.

119. "**Mortar steel.**"—Assuming that the term "mortar steel," as employed in section 2 of the fortifications appropriation act of March 2, 1895 (28 Stat. 707), has not a settled technical meaning, it is properly construable as including any steel of such quality as is considered by experts to be adapted for use in the construction of mortars. 21 Op. 179.

120. "**Municipal legislation.**"—The term "municipal legislation" is limited to that class of laws that relates solely to the internal affairs of the country and the relations of the people to each other. 22 Op. 627.

121. "**Mutual mistakes of fact.**"—See "*Errors of fact.*"

122. "**Nationals.**"—Seamen born in the Philippine Islands, being persons whose civil and political status is by the treaty of Paris, which is the latest expression of the supreme law of the land, declared to be a matter for future determination by Congress, are not citizens of the United States within the meaning of any statutes concerning seamen or any other statute or law of the United States. From the standpoint of our Government they are not citizens of the United States in any sense. They are persons who are not subjects of any foreign power, and are, from an international standpoint, subjects of the United States, or, to use a term that has been suggested, "nationals." 23 Op. 402.

123. "**Navigable depth.**"—"Navigable depth" is a depth sufficiently wide to be navigated by vessels either moved by sails or steam and to permit them to pass each other. 21 Op. 29.

124. "**No money shall be expended except in accordance with appropriations made by**

**Congress.**"—The phrase "no money shall be expended except in accordance with appropriations made by Congress," as used in the act of December 21, 1905 (34 Stat. 5), means nothing more than that no money shall be expended in *excess* of appropriations made by Congress. 25 Op. 557.

125. "**No person appointed to a place.**"—The phrase "no person appointed to a place," as used in the civil-service rule substituted by the President November 2, 1894, for section 4 of departmental Rule II, affects those holding places at that time as well as those thereafter appointed. 21 Op. 91.

126. "**Nomination.**"—See "*Appointment.*"

127. "**Not specially enumerated or provided for.**"—The words "not specially enumerated or provided for in this act," used in Schedule N of the act of March 3, 1883 (22 Stat. 511), in the clauses fixing a duty upon "bonnets, hats, and hoods for men, women, children, composed of chip, grass," etc., and "upon braids, plaits, flats, laces, etc., used for making or ornamenting hats, bonnets, hoods," etc., apply to articles of the description mentioned, and not to the material out of which such articles are made. 17 Op. 672.

128. "**Notes in circulation.**"—Notes of a national banking association, signed by the proper officers, are not "notes in circulation" within sections 5214 and 5215, Revised Statutes, so long as the bank has never parted with any interest in or control over them, and may either issue them or cause them to be canceled or destroyed at its option. 20 Op. 695.

129. "**Now receiving.**"—The words "now receiving" in section 1 of the act of June 16, 1880 (21 Stat. 281), should be construed to mean now entitled to receive. 17 Op. 327.

130. "**Obligation or other security of the United States.**"—The definition given to the words "obligation or other security of the United States," in Revised Statutes, section 5413, is not intended to be general, but is limited in its application. 22 Op. 40.

131. "**Offenses.**"—The word "offenses," in section 730, Revised Statutes, means offenses against the United States. 20 Op. 590.

132. "**Or other works.**"—The words "or other works," in clause 2 of the proviso to section 3 [7] of the act of July 13, 1892 (27 Stat. 110), are not to be interpreted according to their natural and usual sense, but are

restricted to things of the same kind as those just enumerated. 22 Op. 332.

**133. "Order."**—The word "order," in the clause in the public printing and binding act of January 12, 1895 (28 Stat. 621), providing "that no order for public printing shall be acted upon after the expiration of one year, unless the entire copy and illustrations shall be furnished within that period," was not intended to include a joint resolution of Congress for the printing of a "history of international arbitrations," digest, etc. 21 Op. 427.

**134. "Original invoice."**—The words "original invoice," found in section 2900, Revised Statutes, were intended to refer only to the consular invoice. 18 Op. 259.

**135. "Other duties."**—The words "other duties," found in section 1494, Revised Statutes, refer to duties other than duties at sea. 23 Op. 324.

**136. "Other persons."**—The phrase "other persons," in the act of March 2, 1837 (5 Stat. 153), now section 1416, Revised Statutes, includes all persons over 18 years, whether of age or not. 21 Op. 327.

**137. "Parade."**—The term "parade," as used in section 49 of the act of March 1, 1889 (25 Stat. 779), does not include rifle practice. 20 Op. 669.

**138. "Pardon."**—A person pardoned becomes "a new man," endowed with "a new credit and capacity;" his guilt has been "blotted out," and he becomes "as innocent as if he had never committed the offense." 18 Op. 149.

**139. "Pardon."**—A pardon is a gracious act of mercy resting on any ground which the Executive may regard as sufficient to call for its exercise. 20 Op. 332.

**140. "Payment."**—The word "payment," as used in the proviso to section 3 of the act of June 20, 1874 (18 Stat. 109), signifies to fix or determine the compensation for the services referred to; and the proviso is a virtual recognition of the practical construction given the act of June 22, 1870 (sec. 189, Rev. Stat.). 19 Op. 65.

**141. "Penalties and forfeitures incurred."**—See "Incurred."

**142. "Pending settlement"** may mean more than "pending payment;" it may include ascertainment. 24 Op. 637.

**143. "Perils of the sea"** means all losses which occur from maritime ventures. 21 Op. 124.

**144. "Perils of the sea."**—The term "perils of the sea," as used in the act of June 20, 1874 (18 Stat. 127), includes all perils on water caused by the sea, or which are such by reason of the sea. 23 Op. 78.

**145. "Permanently incapacitated."**—An officer is "permanently incapacitated" within the meaning of the act of March 2, 1895 (28 Stat. 910, 920), as of the pension acts, when his disability appears to be chronic or of indefinite future duration. 21 Op. 286.

**146. "Person."**—Transportation companies conducting the business of transportation, either by land or water, are included within the term "person," as used in section 6 of the act of March 3, 1891 (26 Stat. 1085). 22 Op. 122.

**147. "Person."**—The word "person," as used in the act of March 2, 1895 (28 Stat. 964), includes a municipal corporation. 23 Op. 428.

**148. "Persons engaged in navigating vessels."**—The terms "persons engaged in navigating the vessel," as used in section 4419, Revised Statutes, comprehend the officers and crew, those who are in the service of the vessel and employed in its management, the working of its machinery, etc., during the voyage. 18 Op. 365.

**149. "Place of location of any public work."**—The words "place of location of any public work," as used in section 3658, Revised Statutes, mean some place, city, or town within a collection district and not the whole district. 25 Op. 536.

**150. "Place of manufacture."**—The words "place of manufacture," as used in the act of March 3, 1903 (32 Stat. 1158), do not mean merely the "country of production," but refer to the particular locality or district in which the goods are produced or manufactured. 25 Op. 142.

**151. "Places."**—The word "places," as used in the proviso in section 9 of the act of June 18, 1878 (20 Stat. 151), relating to commutation for quarters, comprehends only military posts and stations. 17 Op. 169.

**152. "Policy of insurance."**—The term "policy of insurance," as used in the act of June 13, 1898 (30 Stat. 448), is a technical phrase, and ordinarily applies to the specific



instrument by which the company agrees to pay a certain amount upon conditions therein stated. 23 Op. 210.

153. "**Port.**"—The words "port" and "land," used in Article II of the treaty of 1894 with China, do not limit the right to return to such Chinese as travel by sea. 21 Op. 357.

154. "**Port.**"—The term "port" may comprehend the city or town occupied by the importers, merchants, and others, but it is not confined in its extent or its limits to the town. It includes the harbor, roadstead, and shores, and all other natural and local incidents which go to make up a locality which comprises both land and water. 22 Op. 306.

155. "**Powder and ordnance depots**" are but convenient departmental designations of depositories of certain specific kinds of military equipment. 23 Op. 444.

156. "**Private hands.**"—The expression "private hands," in section 3992, Revised Statutes, was intended to cover all except common carriers on post routes. Neither the latter nor their employees can be considered as "private hands" under this section, and if they could be the express or implied obligation of railroads to carry letters for each other to remotely connecting lines would amount to "compensation" within the meaning of the statute. 21 Op. 395.

157. "**Profit**" is the gain made upon any business or investment when both the receipts and payments are taken into account. 22 Op. 320.

158. "**Promissory note.**"—A promissory note is an unconditional promise to pay to another's order, or bearer, a stated sum of money at a specified or implied time. 22 Op. 369.

159. "**Promotions.**"—Promotion is the advancement of officers already in the Army, according to seniority, to vacancies happening in the different arms of the service and according to rules prescribed by law or by regulations having the force of law. 17 Op. 198.

160. "**Promotion or appointment in other branches of the Government.**"—The words "promotion or appointment in other branches of the Government," in the exception to the proviso in the appropriation act of July 11, 1890 (26 Stat. 235), which requires certificates

of residence of applicants for examination before the Civil Service Commission, signify promotion or appointment in the classified service of some other Department than that to which the applicant may belong. 19 Op. 624.

161. "**Public warehouses,**" referred to in section 2932, Revised Statutes, means bonded warehouses. 23 Op. 419.

162. "**Quantity.**"—The terms "quantity" and "whole quantity," as employed in Schedule M (Rev. Stat., 2d ed., p. 476), are not to be understood as covering all the fruit imported in any one vessel shipped to one consignee, if coming from different consignors. Each consignment, not only from one party, but of each separate kind of fruits specified in the statute, is to be considered as the "quantity," and as the "whole quantity," therein specified. 17 Op. 203.

163. "**Receipt.**"—A receipt is a writing acknowledging the taking of money or goods, and may or may not be negotiable, as the party by whom it is given may choose to make it or local law may provide. 22 Op. 283.

164. "**Recess of the Senate—Adjournment.**"—The recess of the Senate during which the President shall have power to fill a vacancy that may happen (Const., Art. II, sec. 2, clause 3) means the period after the final adjournment of Congress for the session and before the next session begins; while an adjournment during a session of Congress means a merely temporary suspension of business from day to day, or for such brief periods of time as are agreed upon by the joint action of the two Houses. 23 Op. 599.

165. "**Reimported.**"—See "Imported."

166. "**Replace.**"—The word "replace," as used in the act of April 23, 1904 (33 Stat. 274), relating to medals of honor, implies the loss, destruction, or surrender of the old medal. 25 Op. 529.

167. "**Saving persons from drowning.**"—See "Succoring the shipwrecked."

168. "**Sea stores.**"—"Sea stores" in our tariff legislation are the stores contained in incoming vessels which are necessary for their use for the purposes of the voyage; articles which, brought into port aboard ship, are to be consumed aboard or carried off again in the outward voyage, or, if put ashore at all, landed only for the convenience of the ship. 21 Op. 92.

169. "**Seashore.**"—The "seashore," in the United States, is that space of land on the border of the sea which is alternately covered and left dry by the rising and falling of the tide; the space of land between high and low-water mark. 25 Op. 173.

170. "**Securities.**"—When the word "securities" is used in the property sense it refers to bonds, mortgages, certificates of deposit, certificates of stock, etc. In this sense postage stamps are not investments or securities. 22 Op. 40.

171. "**Security.**"—The word "security" as used in article 4 of the act of 1877 (19 Stat. 344) is an evidence of public debt, as a bond, or a certificate of deposit, or other subject of investment. 22 Op. 40.

172. "**Seizure.**"—A seizure implies an actual caption of the thing seized; open, visible possession taken and maintained. 17 Op. 82.

173. "**Sessions.**"—The word "sessions" in section 1852, Revised Statutes, as amended by the act of December 23, 1880 (21 Stat. 312), limiting the sessions of the Territorial legislatures to sixty days, includes the whole period between the time fixed by law for the meeting of the legislative assemblies and their *sine die* adjournment, Sundays and intermediate adjournments not excepted. 19 Op. 259.

174. "**Sheep.**"—See "Cattle."

175. "**Settlement.**"—The word "settlement" in legal use embraces both ideas—the idea of discharging an obligation by payment and the idea of arriving at its amount by ascertainment and adjustment. 24 Op. 637.

176. "**Shipwreck.**"—The word "shipwreck," as used in the act of June 18, 1878 (20 Stat. 165), includes not only those in danger from "perils of the sea" by reason of the threatened destruction of their ship, but also those who, having parted from their vessel, are in a situation where, without rescue or succor, they would die of starvation, thirst, or exposure. 23 Op. 78.

177. "**Shore.**"—The word "shore," in Spanish law, means that space of land which the waters in the movement of the tide alternately cover and uncover, the limit of the inner or land line being at the point of the highest equinoctial tides. Where the tides are perceptible, the shore line begins on the

land side at the line reached by the waters in storms. 25 Op. 173.

178. **Smuggling** is the actual passage of dutiable goods through the lines of the customs-house without paying or securing the payment of the duties thereon. 24 Op. 583.

179. **Smuggled goods** are to be associated with prohibited goods and are not liable to duty. The Government should, therefore, limit its action to forfeiture of the goods and prosecution of the offender. *Ib.*

180. "**Special privilege.**"—A "special privilege" is one which is not open to all persons alike who comply with terms and conditions fairly within the power of all. The limitation of a right to people of a specified race or class is necessarily a "special privilege." 21 Op. 333.

181. "**Specifically required by law.**"—The words "specifically required by law," found in section 2, Rule IX, of the Civil Service Rules, which provides that "Any person who has been separated from the service by reason of a reduction of force specifically required by law may be reinstated," etc., mean that the reduction of force must have been specifically required, not that the removal of the particular individual must have been specifically required by law. 23 Op. 87.

182. "**Stationery.**"—The word "stationery" has no special legal definition, but is ordinarily defined as the "articles usually sold by stationers; the various materials employed in writing, such as paper, pens, pencils, and ink." 21 Op. 59.

183. "**Stipulation.**"—The word "stipulation," as used in section 3753, Revised Statutes, denotes an undertaking in the nature of bail, and is analogous to the "stipulation for value" under present admiralty practice, the measure of the Government's obligation being limited in section 3754, Revised Statutes, to "the value of the interest of the United States in the property in question." 24 Op. 679.

184. "**Subjects.**"—The word "subjects" is used in treaties and international awards chiefly because the inhabitants of monarchies are called subjects instead of citizens; yet in the act of April 6, 1894, it was intended to embrace Indians. 21 Op. 466.

185. "**Succoring the shipwrecked.**"—The expressions "succoring the shipwrecked," and "saving persons from drowning," for

which, by section 12 of the act to organize the Life-Saving Service, approved June 18, 1878 (20 Stat. 165), the Secretary of the Treasury is authorized to bestow the life-saving medal of the second class, has reference to the rescue of persons who are subjected to the perils of the sea in any of the waters of the United States and in the vicinity of any life-saving station, lifeboat station, or house of refuge, either by shipwreck, or from being upon or connected with any vessel in distress. 21 Op. 124.

**186. "Such."**—The word "such" ordinarily refers to the next immediate antecedent, but not necessarily; never when the purpose of the section in which it is used would thereby be impaired. 21 Op. 551.

**187. "Such arms or corps."**—The words "such arms or corps," in the act of May 17, 1886 (24 Stat. 50), refer to the "arm or corps," the duties of which the graduate has been adjudged competent to perform. 20 Op. 149.

**188. "Such passengers."**—The phrase "such passengers" in the concluding portion of section 2 of the act of August 2, 1882 (22 Stat. 189), refers to steerage passengers. 22 Op. 500.

**189. "Supplies."**—The term "supplies," as employed in section 16 of the act of June 26, 1884 (23 Stat. 57), includes coal. 19 Op. 687.

**190. "Surplus."**—The term "surplus," as applied to banks in section 2 of the war-revenue act of 1898 (30 Op. 448), includes not only the amount set apart as a minimum surplus under the national banking act, but also such an amount as has been set apart by a vote of the directors or other authorized action of the bank to strengthen the capital, and is thus held out to the public as a part of its banking capital. 22 Op. 320.

**191. "Term" or "Terms."**—The word "term," or "terms," in section 1 of the act of June 11, 1878 (20 Stat. 103), providing for the appointment of three Commissioners for the District of Columbia, means "term of service." 17 Op. 158.

**192. "The service."**—See "Departmental Service."

**193. "To be immediately available."**—The appropriation of specific funds "to be immediately available" ordinarily imposes the

duty of expending them for the purposes named in the act. 21 Op. 420.

**194. "To enable."**—The phrase "to enable," in the act of July 1, 1898 (30 Stat. 613), making appropriation "to enable the Secretary of the Treasury to pay" a certain individual claim, is in words only permissive and is governed by and does not govern the context. 22 Op. 295.

**195. "Tramway."**—Under Spanish law a tramway is a railroad constructed on a public highway. 22 Op. 551.

**196. "Treasury notes."**—The term "Treasury notes" has been generally employed by Congress from an early period to designate interest-bearing notes of the United States, something intermediate between the currency and the funded debt of the United States. 20 Op. 319.

**197. "Troops."**—The word "troops" as used in section 6 of the act of July 1, 1862 (12 Stat. 493), providing for the transportation of mails, troops, and ammunitions of war, etc., by Government-aided railroads, includes enlisted men of the Navy. 20 Op. 11.

**198. "Troop."**—The word "troop" as used in the Michigan land-grant act of June 3, 1856 (11 Stat. 21), and the supplemental act of July 3, 1866 (14 Stat. 78), includes an officer of the Engineer Corps of the Army, in the discharge of his duties connected with river and harbor improvements. 19 Op. 572.

**199. "Vacancy."**—The word "vacancy," used in the act of May 17, 1886 (24 Stat. 50), contemplates a vacancy in the arm of the service in which an additional second lieutenant is then employed. 20 Op. 149.

**200. "Vessels."**—The word "vessels," as used in the New York Harbor act (25 Stat. 209), does not relate to vessels in the sense contemplated by sections 5292-5294, Revised Statutes, authorizing the remission of fines, penalties, and forfeitures by the Secretary of the Treasury. 25 Op. 220.

**201. "Vessels of the United States."**—See "American Vessels."

**202. "Vested"**—"Vested in possession or enjoyment."—There is no distinction in the meaning of the terms "vested" in the first paragraph, and "vested in possession or enjoyment," in the second paragraph of section 3 of the act of June 27, 1902 (32 Stat. 406), which provides for the refunding of taxes paid upon legacies and bequests for religious uses,

etc., under the act of June 13, 1898 (30 Stat. 464). 24 Op. 98.

203. "**Vested in possession or enjoyment.**"—The two expressions should be given their technical legal significance in each paragraph. The words "vested in possession or enjoyment" do not imply an actual physical possession, but mean merely that the contingency had been removed prior to July 1, 1902. *Ib.*

204. "**Warehouse.**"—A warehouse is a place for storing goods, not for selling them at retail. The place of business of a retail dealer in any commodity can not properly be termed a warehouse. 22 Op. 279.

205. "**Warehouse receipts.**"—A warehouse receipt is nothing more nor less than the written statement of the warehouseman that certain goods, merchandise, or property are deposited in his warehouse and held on storage for some particular person or persons. 22 Op. 283.

206. "**Which the remitter may select.**"—The words "which the remitter may select" in the act of March 3, 1883 (22 Stat. 526), are substantially the ones used in section 4028, Revised Statutes, which authorizes the issue of the ordinary postal money orders; and while many reasons may exist why the designation of place of payment need not be contemporaneous with the issue where no letter of advice is sent, they do not seem to have been accepted by Congress, and the intention of the law is express that the remitter and not the payee should select the place of payment. 17 Op. 621.

207. "**Whole quantity.**"—*See* "Quantity."

208. "**Wines.**"—The word "wines," as used in the second proviso to paragraph 296 of the tariff act of July 24, 1897 (30 Stat. 174), being used without limitation, the provisions of that paragraph are applicable to champagnes, notwithstanding the special champagne provisions contained in paragraph 295 of that act. 23 Op. 48.

209. "**Wool.**"—The word "wool," as used in paragraph 297 of the tariff act of 1894 (28 Stat. 531), refers to hair of the sheep only, and the new duties upon articles made of the hair of other animals went immediately into effect upon the passage of the act. 21 Op. 66.

210. "**Wool,**" within dictionary definitions, includes the hair of the alpaca and of the angora goat, but never is used to include

all goat's hair, nor yet camel's hair, cow hair, or horse hair. *Ib.*

211. "**Works of art.**"—Picture frames, containing oil paintings which are imported into this country for exhibition purposes, are not to be treated as parts of "works of art" and therefore are not entitled to entry free of duty under paragraph 702 of the tariff act of July 24, 1897 (30 Stat. 203). 25 Op. 276.

212. "**Wounds received in battle.**"—An aggravation of a disease from jolting in a saddle during active service is not "wounds received in battle," within the meaning of section 32 of the act of July 28, 1866 (14 Stat. 337), which provides for the retirement of army officers upon the full rank of the command held by them at the time such wounds were received. 17 Op. 7.

213. "**Wounds received in the line of his duty.**"—This expression, found in section 1494, Revised Statutes, which provides for the promotion of officers of the Navy whose physical disqualifications do not incapacitate them for other duties, means precisely what it says—namely, wounds received in the line of duty—and is not restricted to any particular part of that duty, as to wounds received in battle or in some hazardous enterprise. 23 Op. 324.

214. "**Wrecked.**"—The word "wrecked," in section 4136, Revised Statutes, must be taken in a very comprehensive sense \* \* \* as applicable to a vessel which is disabled and rendered unfit for navigation, whether this state of the vessel has been caused by the winds or the waves, by stranding, by fire, by explosion of boilers, or by any other casualty. 21 Op. 199.

215. "**Wrecked in the United States.**"—If any of the injuries which have made a vessel a wreck were received in the United States, in the absence of bad faith, she should be held to be embraced in the clause "wrecked in the United States," although other injuries had been received elsewhere. *Ib.*

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#### WORKS OF ART.

*See* TREATIES, II—Italy.

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#### WORLD'S COLUMBIAN EXPOSITION.

*See* EXPOSITIONS AND FAIRS, I.

**WRECK.**

Section 2928, Revised Statutes, in regard to appraisal of merchandise taken from a wreck, applies only to goods wrecked while on the voyage to the United States. 21 Op. 121.

*See* CUSTOMS LAW, 92-93; SHIPPING, 9-16; VESSELS, 6-8.

**WRITING.**

*See* QUASI JUDICIAL ACT.

**WRITS.**

*See* COURTS, 32.

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**YACHT RACES.**

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*See* DEPARTMENT OF COMMERCE AND LABOR, 3.

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*See* DISTRICT OF COLUMBIA, V.



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